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# FIFTY FAMOUS TRIALS

BY  
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Of the New York Bar



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TO MY GOOD WIFE  
TO WHOSE CONFIDING NATURE  
IT WAS AT ALL TIMES  
AN ACCEPTED ALIBI FOR ABSENCES  
THIS HUMBLE WORK IS AFFECTIONATELY,  
DEDICATED

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## AUTHOR'S FOREWORD

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In the selection of fifty of the world's most famous trials, it would probably be difficult to find two minds in perfect agreement. There is, of course, no fixed standard by which they could be measured. In the group which is here presented, the trials which are essentially of historical interest, such as John Hampden, Warren Hastings, Aaron Burr, etc., are predominant. Others owe their selection to their interest or importance from the standpoints of sociology, criminology or jurisprudence.

Lord Blackstone, in his Commentaries, probably without meaning to be facetious, defines a court as a place wherein justice is judicially administered. The hidden implication finds many exemplifications in history, among which there is probably none more striking than the trial of Lady Alice Lisle (1685), or that of Captain Dreyfus (1894).

The purpose of this work is to present in compact form the salient features of each trial considered, so that a fair knowledge of it may be acquired in a few minutes' reading. For the benefit of those who may wish to go more thoroughly into any one of them, there is appended hereto a bibliography of outstanding works.

In the interest of orderly arrangement and for greater facility of reference, the trials have been grouped under five heads, viz.: I. POLITICAL OR HISTORICAL; II. RELIGIOUS; III. MILITARY; IV. CIVIL; V. CRIMINAL. The arrangement within each of these groups is purely chronological.

R. C. R.

NEW YORK CITY, December 1st, 1937.





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I. POLITICAL  
OR HISTORICAL TRIALS



QUEEN ANNE BOLEYN  
(1536)

Anne Boleyn was the second wife of King Henry VIII of England, who, in order to marry her, had procured a divorce from his first wife, Queen Catherine of Spain. Like most men who obtain riddance of one wife only to receive the embraces of another, King Henry within a few years after marrying Anne grew eager for a second change. His desire to have Queen Anne out of the way was probably due chiefly to a new attachment which he had formed for the Lady Jane Seymour, one of the most charming young women who adorned his court. It is related, however, that Henry's mind was also troubled with the belief that his second marriage rested under the ban of Divine displeasure, and hence he was anxious to have it annulled. This belief may have been strengthened by the fact that Anne had failed to present him with male issue, her first child having been a girl and her second a boy, still-born.

Some three years after the marriage, slanderous rumors reached the King's ears reflecting upon the fidelity of his wife, which Henry seized upon as a

pretext for carrying out his intentions. It was alleged that the Queen maintained illicit relations with a number of men at court, among them her brother, Lord Rochford. Whether these charges were true or false was never satisfactorily established. Queen Anne was of an animated, vivacious temperament, and the freedom of her bearing toward her associates readily laid her open to sinister accusations. These reports culminated in the arrest of the Queen, together with her brother and four other men attached to the royal household. One of these, Mark Smeton, a physician, confessed to being a paramour of the Queen. It was generally said that he had been bribed to make this confession, and that his life had been promised to him as a reward; but he was hanged nevertheless, as he was "not fit to live to tell tales." The other men were also found guilty and were beheaded.

While she was imprisoned in the Tower, and after friends of the King had tried in vain to wring a confession from her, Queen Anne wrote a touching note to Henry, in which she thus protested her innocence:

"Let not your Grace ever imagine that your poor wife will ever be brought to acknowledge a fault where not so much as a thought thereof preceded; and, to speak the truth, never prince had a wife more

loyal in all duty, and in all true affection, than you have ever found Anne Boleyn. But if you have already determined of me, and that not only my death, but an injurious slander, must bring you the enjoying of your desired happiness, then I desire of God that he will pardon your great sin therein, and likewise mine enemies, the instruments thereof. My last and only request shall be that myself may only bear the burden of your Grace's displeasure, and that it may not touch the innocent souls of those poor gentlemen who, as I understand, are likewise in imprisonment for my sake."

Her friend the Archbishop Cranmer, one of the few who dared remain loyal to her now that she was in disfavor with the King, also addressed a letter to Henry in which he earnestly pleaded her cause, saying, "I never had better opinion in woman than I had in her, which maketh me think that she could not be culpable."

But the King's resentment was not to be dispelled, and his affection for the Lady Jane had completely effaced his previous esteem for the unhappy Queen. His ministers were urged to prosecute their intrigues for the purpose of obtaining sufficient evidence for her conviction. On May 15, 1536, Anne was brought to trial before a jury of twenty-six peers. The indictment charged the Queen with



high treason, the statute covering this crime being broad enough to embrace the misconduct alleged against her.

It is recorded that the Queen answered all the evidence brought against her very discreetly, and seemed fully to clear herself from every accusation. She was not confronted with her chief accuser, Smeton, as he had been condemned three days before, and so could not be a witness under the law. The principal testimony offered by the prosecution was the deposition of a dead woman, but the jury, doubtless swayed more by their fear of offending the King than by the evidence, found the Queen guilty. The sentence pronounced against her was that she should be burned or beheaded, at the King's pleasure.

But even this did not satisfy the inflamed monarch. He determined that before the Queen should be executed the marriage must be annulled and the issue made illegitimate. This he accomplished by alleging an earlier marriage contract between Anne and the Earl of Northumberland. The Queen was assured that if she confessed to such a prior marriage, her sentence would be carried out by beheading, instead of burning, her. On the strength of this promise, it is said, she made the desired confession. This phase of the Queen's case is discussed

by a learned commentator of the eighteenth century as follows:

"The two sentences passed upon her, the one of attainder by adultery and the other of divorce on account of a previous contract, did so contradict one another, that it was apparent one if not both of them must be unjust, for if the marriage between the King and her was null from the beginning, then, if she was not the King's wedded wife, there could be no adultery. And her marriage with the King was either a true marriage or not; if it was true, then the annulment of it was unjust; for there could be no breach of that faith which was never given. So that it is plain, the King was resolved to be rid of her, and to make her daughter illegitimate; and the very method he took discovered the injustice of his proceedings against her."

The execution of the Queen took place on May 19, 1536, two days after the annulment of her marriage. Upon the scaffold she made a short speech which is equally remarkable for its simple eloquence and as proof of her magnanimous nature:

"Good Christian people," she said, "I am come hither to die; for according to the law, and by the law, I am adjudged to die; and therefore I will speak nothing against it. I am come hither to accuse no man, nor to speak anything of that whereof I am

accused and condemned to die; but I pray God save the King, and send him long to reign over you; for a gentler, nor a more merciful prince was there never, and to me he was ever a good, a gentle and a sovereign lord. And if any person will meddle of my cause, I require them to judge the best."

MARY, QUEEN OF SCOTS  
(1586)

The vicissitudes of royalty are well exemplified in the turbulent career of Mary Stuart, Queen of Scots. Mary was the daughter of James V of Scotland. As a Catholic who denied the validity of Anne Boleyn's union with Henry VIII, she disputed her cousin Elizabeth's title to the English crown upon the death of Mary Tudor.

The early years of her life were spent at the French court. Upon the death of her first husband, Francis II of France, when Mary was in her nineteenth year, she returned to Scotland. Here her reign was constantly disturbed by the strife which was bitterly waged between her Catholic supporters and the Protestants, led by the reformer John Knox. The violence of these dissensions was aggravated when Mary's second husband, Henry Stuart, Lord Darnley, was murdered under circumstances which pointed strongly to Mary as an accessory to the crime. This suspicion was strengthened in the eyes of her indignant subjects when, shortly afterwards, Mary wedded her husband's reputed assassin, James Hepburn, Earl of Bothwell. She was finally im-

prisoned by the rebellious Scots and compelled to abdicate her throne in favor of her infant son James.

In 1568 Mary escaped from prison and fled into England, throwing herself on the mercy of her cousin Elizabeth and invoking the English queen's assistance toward the recovery of her throne. But because of Mary's religion and her pretensions to the English crown, Elizabeth was little disposed to aid her suppliant kinswoman. She deemed it prudent, in the interest of her own safety, to hold Mary a prisoner instead. About this time a secret but well-defined movement was in progress among the papists of England and the continent to dethrone Elizabeth in favor of a popish successor. In 1572 the detection of a plot for the invasion of England by Spain in behalf of Mary resulted in a stricter confinement of her person and a demand from Parliament for her execution. This latter proposal was rejected by Elizabeth.

In 1586 the arch plotters, John Ballard, Anthony Babington and others, were apprehended and convicted of a conspiracy to assassinate Queen Elizabeth. At the same time Queen Mary was accused of countenancing and encouraging the conspiracy, and a special commission was appointed for the purpose of trying her on the charge of treason. Mary at first refused to appear before the commis-

sioners for trial, on the ground that this would be in derogation of her royal dignity and an acknowledgment that she was a subject of Queen Elizabeth, which she was unwilling to concede. She expressed her readiness to answer the complaint against her before a full Parliament, but this privilege was denied to her. She was finally persuaded to appear before this tribunal, as her only recourse to clear herself of the crime laid to her charge, on condition that her protest should be registered against the legality of the commission's jurisdiction over a sovereign, the next heir of the English crown.

The proceedings began on October 14, 1586, in Fotheringay Castle. Mary was not represented by counsel. She conducted her own defence with ability and courage, and for two days she held her own against the imposing array of English legists and statesmen representing the prosecution. The evidence against her was chiefly documentary, and consisted in the main of certain correspondence in cipher with her English agents abroad, which had been intercepted by Sir Francis Walsingham, a friend of Elizabeth's and deciphered by his secretary. In these letters Mary was represented as giving encouragement to a design for the Spanish invasion of England under the Prince of Parma. The charge against her was further supported by the written confession of Babington.

The queen stoutly denied that she knew either Babington or Ballard, or that she had written to either of them. The letters over her signature which were produced in evidence she declared to be forgeries. Transcripts from Babington's letters to her were read, in which the whole conspiracy was laid bare. To this the prisoner replied: "Perhaps Babington might have written these letters, but let it be proved that I received them; if Babington or anybody else does affirm it I say they lie; other men's faults are not to be imputed to me. A packet of letters which had been detained from me almost a whole year came to my hands about that time, but by whom sent I know not."

The lawyers next undertook to show that Mary had received overtures from the king of Spain looking to the transfer of her rights to the English throne. She admitted that a priest had urged her to further such a scheme under penalty of disinherittance, and that the king of Spain did lay claim to the kingdom of England, and would not recognize any title but hers. She asserted, however, that it was her privilege to dispose of her claim to the crown as she chose.

A number of other letters written by the queen were introduced, in which she had appealed to influential persons to procure her release from prison.

These she acknowledged having written, but answered that such things did not tend to the destruction of the queen, and that she had several times plainly let her cousin know that she would endeavor to obtain her liberation.

Another damaging circumstance established against her was that she had in her service and in receipt of an annual pension the instigator of a previous attempt on the life of Elizabeth. In justification of this she pointed out that a number of her adversaries in Scotland were likewise pensioners of Queen Elizabeth.

After the second day the trial was adjourned to the star chamber, where, on October 25, the commissioners met and with only one dissenting vote found Mary guilty of having compassed and imagined divers matters tending to the destruction of Elizabeth. The nobles who announced the verdict to the prisoner urged her to acknowledge her offences and by repentance to expiate them before her death, giving her to understand that as long as she lived the religion established in England would not be safe. From this statement the queen seemed to derive a solemn pride, giving thanks to God that she should be esteemed an instrument for the restoration of her religion in the kingdom.

The intercession of the French envoys for the life of the queen was rejected by Elizabeth. The



sentence of death was proclaimed with bonfires and bell ringing throughout England, and the death warrant was signed February 1, 1587. On the morning of February 8 Mary took her seat on the scaffold, heard with unconcern the reading of her sentence and solemnly declared her innocence. Rejecting the offices of the Protestant clergyman who attended her, she offered a prayer in Latin for the prosperity of her church, for Elizabeth, her son and all her enemies. Then, with the courage which had sustained her throughout her stormy career, she bowed her head and received the executioner's stroke.

SIR WALTER RALEIGH  
(1603)

The picturesque career of this adventurous knight, navigator, scholar and courtier, once the first of Queen Elizabeth's favorites, was destined to have a tragic end. The reverse in his fortunes, beginning in the closing years of Elizabeth's reign, was hastened by the death of the queen and the accession of James I in 1603.

The attitude of the new monarch toward Raleigh was irreconcilably hostile. The many concessions which Sir Walter had previously enjoyed by royal favor were now withdrawn; he was dismissed from the captaincy of the Guard and deprived of the governorship of Jersey. It was not unnatural, as a consequence, that he should have been drawn into the conspiracies which arose against James in the early months of his reign. For his alleged complicity in these plots he was committed to the Tower in July, 1603.

Although the evidence against him was hardly sufficient to establish his guilt, his trial was conducted with such outrageous unfairness as to render his conviction inevitable. According to the particulars of the indictment, Sir Walter was the

instigator of a movement to depose the king, murder his children, and advance Arabella Stewart to the throne of England. Through his agents, Lord Cobham and the latter's brother, George Brooks, he had endeavored to enlist the aid of the Archduke Albert of Austria, the Duke of Savoy and the king of Spain in this treasonable project. He had furthermore written and published a book, it was alleged, attacking the king's title to the crown.

After the jury had been selected and approved by Raleigh, the attorney general began the proceedings with a vicious attack upon the character of the defendant, unfolding the details of his high offence as based on the written confession of Lord Cobham. When he had concluded his opening address, the following dialogue ensued:

Raleigh—I do not hear yet that you have spoken one word against me; here is no treason of mine done. If my Lord Cobham be a traitor, what is that to me?

Attorney General—All that he did was by thy instigation, thou viper; 'twas through thee, thou traitor.

Raleigh—It becometh not a man of quality and virtue to call me so; but I take comfort in it, it is all you can do.

Chief Justice Popham—Sir Walter Raleigh, Mr. Attorney General speaketh out of the zeal of his duty, and you for your life; be valiant on both sides.

The attorney general then introduced the confession of Cobham, upon which the case against the prisoner chiefly depended. Cobham confessed that he had a passport to go into Spain, intending to go first to the Archduke of Austria to confer with him and thence to Spain, to deal with the king for 600,000 crowns to finance the enterprise. He had never entered into these negotiations, he averred, but by Raleigh's instigation, but that "he would never let him alone."

To this Sir Walter made reply: "If I knew any of these things, I would absolutely confess the indictment and acknowledge myself worthy a thousand deaths. Why, then, my Lords, let my accuser be brought and let me ask him a question and I have done; for it may appear from his own relation that his accusation cannot be true, or he may be discovered by examination. If you condemn me upon bare inferences and will not bring my accuser to face, you try me by no law, but by a Spanish inquisition. If my accuser were dead or out of the realm, it were something; but my accuser lives and is in the house, and yet you will not bring him to my face."

Chief Justice Popham answered the prisoner's objection by reminding him that under a recent enactment affecting the rules of evidence, it was sufficient if proof were made either under hand or by testimony of witnesses or by depositions. Then followed the reading of the testimony of Brooks and others who confirmed the allegations contained in Cobham's confession. When the prosecution had closed its case, Raleigh sprang a complete surprise on the court by producing in his defence a letter in Cobham's handwriting, addressed to Raleigh, which read as follows:

"Seeing myself so near my end, for the discharge of my own conscience and freeing myself from your blood, which else will cry vengeance against me: I protest, on my salvation, I never practiced with Spain by your procurement: God so comfort me in this my affliction as you are a true subject for anything that I know. So God have mercy on my soul, as I know no treason by you."

This created a profound sensation in the court room. The attorney general, however, was not to be confounded by this unexpected development, but was before the jury at once with arguments to offset the effect of the new evidence. The letter, he protested, was cunningly urged from Cobham, while the first confession was the simple truth.

Lest it might seem that the first confession was drawn from Cobham by promise of mercy or hope of favor, the Lord Chief Justice wished to have the jury satisfied on this point. The Earl of Devonshire thereupon declared that the same was purely voluntary and not extracted upon any hope or promise of pardon.

This was the last evidence taken; the jury retired and in less than fifteen minutes returned a verdict of guilty. The Chief Justice delivered the customary judgment upon conviction for treason, namely, that the prisoner should be drawn upon a hurdle to the place of execution, there to be hanged and cut down alive, disembowelled and quartered.

The sentence was not immediately carried out. Raleigh was sent back to the Tower, where he remained until March, 1617. His confinement was not rigorous, so that he was able to apply himself to literary pursuits and researches in chemistry, of which he was a devoted student. It was here that he wrote the first volume of his famous "History of the World." During all this time he did not abandon the hope of regaining his freedom. Through various ministers and favorites he managed to reach the king's ear, and finally succeeded in interesting James in a proposal to search for gold in Guiana. He undertook to find a gold mine there

without encroaching on a Spanish possession. The Spanish ambassador, Gondomar, learning of this wild project, warned the king that the Spaniards had settlements on the coast of Guiana. The king promised that if Raleigh should be guilty of piracy in prosecuting his enterprise, he should be executed on his return.

On March 17, 1617, Raleigh started on his ill-fated expedition. After a fruitless search for the mine and several encounters with the Spaniards, in one of which Sir Walter's son lost his life, the party was forced to return home. Raleigh was at once arrested and, in keeping with the king's promise to Gondomar, was executed under his sentence of fifteen years previous.

## THE GUNPOWDER PLOTTERS

(1605-1606)

The famous Gunpowder Plot, a conspiracy to blow up King James I of England and his parliament on November 5, 1605, grew out of the bitter feeling harbored by the Catholics of England against their Protestant monarch. The leader of the conspiracy was Robert Catesby, who employed as his chief lieutenant Guy Fawkes, a zealous Catholic with a reputation for unscrupulous and daring actions. Others who were drawn into the plot included Catesby's cousins, Robert and Thomas Winter, John Grant, Thomas Percy, John Wright and his brother Christopher, Ambrose Rokewood, Robert Keyes, Thomas Bates, Francis Tresham, Everard Digby, Henry Garnet and Father Greenway, the two last-named being Jesuit priests.

In May, 1604, the conspirators hired a building adjoining the House of Lords, from the cellar of which they started to work a mine. After they had proceeded about half way through the wall of the parliamentary building, which was three yards in thickness, they learned that a vault immediately under the House of Lords was available. This space was at once hired by Percy, and thirty-six barrels of gunpowder, weighing over a ton and a half, were



secreted therein. These preparations were not completed until a year later, in May, 1605, when the conspirators separated to await the opening of Parliament on November 5, and in the meantime to enlist the support of the Pope and the Catholic royalty on the continent when the time should be ripe for the re-establishment of papacy in England.

But the long interval between the hatching of the plot and its final execution was unfavorable to its fruition. Some of the prospective victims had friends among the conspirators, who were reluctant to see them sacrificed along with the particular objects of their enmity, and this circumstance led to the exposure of the enterprise. Toward the end of October, Lord Monteagle, a brother-in-law of Francis Tresham, received an anonymous communication, in which he was urged not to attend the opening of parliament, as "they shall receive a terrible blow and yet they shall not see who hurts them." The significant wording of this message must have conveyed some intimation as to the probable nature of the plot, for after a consultation among the ministers it was decided to search the cellar under the House of Lords before the opening of parliament, but not immediately, so that the conspirators might not be warned that the plot had been discovered. On November 4th the king

ordered a thorough examination of the buildings. On reaching the cellar they found Guy Fawkes on guard, and a brief search disclosed the stores of gunpowder surrounded with fagots. Fawkes was at once arrested, and upon examination under torture, he revealed the whole conspiracy and gave the names of his accomplices. The latter were pursued to a house in Staffordshire, where Catesby, Percy and the two Wrights were killed in resisting arrest, and the rest were taken prisoners.

The trial which attracted most attention of those which now followed was that of Henry Garnet, the Jesuit. With the exception of Greenway and Gerard, who escaped, and Tresham, who died in the Tower, the other conspirators were speedily disposed of by trial and execution, none of them having any valid defence to interpose. Garnet was not apprehended at the outset. He was first implicated in the plot on December 4th by the confession of Bates. Learning of this, the good man went into concealment; but a month later, realizing that his arrest was only a question of time, he surrendered himself. It seems that he had no active part in the affair, but contributed his offices in the capacity of religious adviser to the group.

Garnet was tried on March 28, 1606. His trial was conducted with gross unfairness because of

the political situation and the general prejudice against the Jesuits which prevailed at the time, owing to their proven complicity in previous plots against the government. It must be admitted, however, that Garnet hurt his own case by his numerous contradictory statements, attempting to justify his equivocation as a "necessary defence from injustice and wrong, there being no danger of harm to others." The evidence of his guilt was largely circumstantial, showing merely that he had been on friendly terms with the conspirators and had frequently met with them during some months prior to the treasonable attempt. The most that was proved against him was that he had knowledge of the plot and had made no effort to expose it. He had been consulted by Catesby, for instance, who had asked him whether it was lawful to enter upon any undertaking involving the destruction of innocent persons with the guilty. To this question Garnet had replied in the affirmative, citing the case of women and children in a beleaguered city. He admitted having cognizance of the details of the plot, which had been conveyed to him by Greenway "by way of confession." On this account, Garnet maintained, he had not been at liberty to divulge the secret. To this point the prosecuting attorney made an effective rejoinder,

arguing that Greenway's disclosure was not to be deemed a sacramental confession, because he was not penitent at the time; and even granting that his information could not properly have been used as against Greenway, there was nothing to hinder his exposure of the other plotters. He pointed out further that even though the prisoner might have had justifiable scruples on that score, he had nevertheless been free to discover the plot without naming the plotters.

The jury returned a verdict of guilty in less than fifteen minutes after they had withdrawn. The Lord Chief Justice rendered the customary judgment, that the prisoner should be hanged, drawn and quartered; but the king gave express orders that the usual cruelties should be omitted in Garnet's case, and that he should be hanged until he was dead. On the scaffold, to which he was conducted on May 3, 1606, Garnet acknowledged that he had been justly condemned, and asked the king's forgiveness. "The intention was wicked," he said in his last moments to those around him, "and the fact would have been cruel; and I should have abhorred it from my soul, if it had taken effect; but I had only a general knowledge of it by Catesby, and offended for not discovering it and using means to prevent it."

JOHN HAMPDEN

(1636-1637)

The name of John Hampden has an enduring place in history by reason of his refusal to pay ship-money to King Charles I of England. This was a form of taxation which the king was privileged to levy without the consent of Parliament on maritime towns and counties to provide ships or their money equivalent in time of war. On two earlier occasions, by an extension of this principle, Charles had issued writs imposing a tax of this character in times of peace, to further his political interests. Each time these measures had aroused some opposition, but no resistance to the tax on constitutional grounds seems to have been offered until the issuance of a third writ on October 9, 1636.

The substance of this writ was that his majesty being given to understand that the sea was infested by pirates and infidels who took and plundered the ships of his majesty's subjects, he therefore directed the sheriff of Bucks to provide from his county a ship of war of 450 tons, with guns and other equipment. The sheriff was further authorized to assess every person equally within the county towards the charges of providing such vessel, and if

any person should resist the assessment, to imprison him until further orders.

Among those who refused to pay the tax was John Hampden, a wealthy Buckinghamshire landowner, who was assessed twenty shillings and was taken into custody upon his failure to render payment. The case against Hampden was heard before all the judges in the Exchequer Chamber, and lasted for six months. Hampden was defended by Oliver St. John and Robert Holborne. The trial consisted chiefly in highly technical presentations by counsel for each side on the legal principles involved in the tax itself and the nature of the writ by means of which it was imposed.

Mr. St. John opened for the defense by attacking the method by which the crown had sought to enforce the tax. He admitted that the king had a right to command the services of all his subjects in time of danger, but questioned his right to assess their property without the consent of Parliament. He argued, furthermore, that before the inland counties were called upon to contribute to the expense of strengthening the naval power, all the seaport counties should first have been levied upon, as this might have produced sufficient revenue for the purpose, on the principle that extraordinary measures should not be resorted to when ordinary means

might prove adequate. He cited instances in the earlier wars when knights who had rendered military service were reimbursed for personal expenses, the loss of their horses or property, and even the charge of keeping prisoners of war. He proceeded to show that money borrowed by the king for the defense of the realm had not only been repaid upon petition, but recovered by suit in the courts of justice.

That the king's subjects were not liable to such charges for the defense of the kingdom was further evident, he maintained, from several acts of Parliament, for instance, 4 Will. I, providing that all freemen should hold their lands and possessions free from unjust exactions; the Magna Charta, granting that no aid should be levied but by the common council of the kingdom; 25 Edw. I, that no aids should be taken but by consent in Parliament; and several others of like import. He concluded his argument by reminding the judges that in the third year of Charles' reign, a commission for aiding his majesty's allies beyond the sea, or for the defense and safety of the kingdom, was condemned by both houses of Parliament and cancelled in his majesty's presence.

Sir Edward Littleton, the solicitor-general, arguing in behalf of the crown, then addressed the judges.

He submitted that the common safety was to be preferred over the individual estate. Upon an invasion, he said, it was lawful to erect bulwarks on any man's land, for the defense of the kingdom. In 1588 armies of 100,000 men and upwards had been raised upon the queen's sole authority and maintained at her subjects' expense; and orders were given, if they could not prevent the enemies from landing, to burn the towns and destroy the corn and all manner of provision that might afford them sustenance. Where was the hope of saving private fortunes, he asked, if the kingdom were suffered to be lost? While it was true that nothing ought to be taken from the subject ordinarily but by act of Parliament, that did not mean that he was not to contribute to his own defense in time of imminent danger. The statutes which prohibited the levying of money on the people without the consent of Parliament referred to unjust exactions, as expressly so worded in the statutes, but did not apply in cases where the whole kingdom was in danger; and such danger might be foreseen by the king, though no war was actually proclaimed.

The chief point made by Mr. Holborne, who then took up the defense in an able and impressive plea, was that the occasion for the writ was not one of immediate danger to the kingdom, and there would



have been ample time for summoning Parliament to deliberate upon means of defense. Though Queen Elizabeth in 1588 had commanded the burning of the corn and other provisions if the enemy should land, she could not lawfully have commanded the people to burn their corn before the enemy landed. All positive laws, he conceded, must yield in the presence of extreme danger, but not when the danger was merely conceived.

Sir John Banks, the attorney-general, closing the case for the crown, declared in the course of his address that as the law had entrusted the king with war and peace, no private subject ought to distrust him, and insinuate that he would cause forces to be mustered and ships provided where there was no imminent danger; that the king was the sole judge and ought not to be questioned; he had no superior but God. He cited some five hundred precedents, some of them before the time of William I, to show that such writs had been issued by the king's mandate without the advice of Parliament. These writs had been issued, not only in time of actual war or invasion, but when the king conceived approaching danger. As to the objection that a Parliament might have been called to raise revenues in the ordinary way, it was known that their proceedings were very slow, and they might have disappointed

the king and defeated his plans. Preparations against the Spanish invasion, he pointed out, were begun in October, 1587, although the Spanish fleet did not sail until June, 1588. Nor did the queen see fit to call a Parliament in all that time, but by an order of council she commanded a royal fleet to be fitted out at the expense of her subjects. He produced other precedents to show that such exactions had been made not only of the maritime places, but of the entire kingdom.

Each of the judges was then given an opportunity to discuss the case upon announcing his verdict. Seven of them gave judgment for the king, while the other five pronounced in favor of the defendant, a majority opinion being decisive.

After the trial of Hampden the popular resistance to Charles I, due to the monarch's persistent abuse of the royal prerogative in regard to taxation, became increasingly formidable; and in 1641, by an act of Parliament, introduced by Selden, the ship-money tax was declared illegal and the judgment against Hampden annulled.

## CHARLES I OF ENGLAND

(1648)

The arraignment and execution of Charles I of England was the culmination of a bitter and protracted dissension between the king and his Parliament, which had continued almost without interruption from the very beginning of Charles' reign. This disagreement had its root chiefly in the king's liberal attitude toward the Roman Catholics in England, which was inspired by his political negotiations with Catholic monarchies on the continent. The members of Parliament sought to effect a change in the king's religious policy by withholding grants of money which Charles needed badly for the conduct of various continental campaigns. But Charles was too stubborn to yield, and his first Parliament, which met in 1625, was dissolved without either side carrying its point.

The second Parliament, convened in February, 1626, met Charles' request for money with a demand for the dismissal of Buckingham, the king's chief adviser, who was very unpopular with the Commons. Again Charles remained obdurate, and dissolved Parliament after a four months' sitting.

He next endeavored to raise the money which Parliament had refused him by means of a forced loan, dismissing Chief Justice Crewe for declining to approve its legality and imprisoning the leaders of the opposition for not subscribing to it. This measure, however, failed to satisfy the king's financial requirements, and in March, 1628, he summoned his third Parliament. Instead of relieving the king's necessities, the Commons renewed their remonstrance against his government and his support of Buckingham. Without having accomplished anything, Parliament was prorogued in June, but re-assembled in January, 1629. Resolutions were passed denouncing the king's innovations in religion and his arbitrary exaction of duties and seizure of goods. Convinced by this time that he could expect no concessions from Parliament, Charles for the third time dissolved it and imprisoned nine members who had figured conspicuously in the opposition to the king.

For eleven years following, Charles ruled without Parliament, raising a limited revenue by enforcing various forms of taxation within the royal prerogative. It was during this period that the famous ship-money case was tried and decided in his favor. In April, 1640, moved by his extreme financial necessities, Charles turned once more to Parliament

for assistance as his last recourse. Refusing to meet the conditions which Parliament now imposed before granting supplies, Charles again dissolved the recalcitrant body and returned to measures of repression.

On November 3d, forced into a submissive attitude by the success of the Scottish rebellion, the king summoned the Long Parliament. This body had now attained to irresistible strength, and proceeded to wrest many important concessions from the king, including the surrender of his right to dissolve Parliament without its own consent. In the course of the ensuing year, however, Charles was engaged in various intrigues with the Irish Catholics and his Scottish supporters with a view to raising a military force strong enough to overcome the opposition at home and to restore his long ascendancy over Parliament. His hostile preparations came to a head in the attempt, on January 4, 1642, to seize with an armed force five members of the Commons whom he had impeached of high treason. Upon entering the House for this purpose, he found "the birds flown," and a few days later he left Whitehall to prepare for war. The civil conflict thus begun terminated in June, 1645, with the crushing defeat of the king's forces at Naseby.

After two years of fruitless negotiations between the discredited monarch and Parliament, Charles escaped to the Isle of Wight. Here a commission of five peers and ten commoners from Parliament, sent to treat with Charles, obtained from him an agreement to recall all his proclamations and to acknowledge that Parliament had taken up arms in its own defence. He granted that the assembly should retain for twenty years the power over the militia and army and of levying money, but two demands he steadfastly resisted. He refused to give up certain of his friends to punishment or to abolish episcopacy. By a vote of 83 to 29, Parliament resolved that these concessions were a foundation to proceed upon in the settlement of the kingdom. But the next day, when the Commons were about to meet, Colonel Pride of the military party surrounded the house with two regiments and seized 41 members who were known to be favorably disposed toward the king, and excluded 160 others. This invasion of Parliament received the popular name of "Pride's Purge." The remnant of the Commons immediately reversed the former vote, passed an ordinance making it treason for a king to levy war against his Parliament and appointed a high court of justice to try Charles under the new law. This court consisted of 130 commission-

ers, including Oliver Cromwell and Col. Pride, and was presided over by John Bradshaw, sergeant-at-law.

The court first met on Saturday, January 20, 1648, in Westminster Hall, 65 commissioners being present. The king, under a heavy guard, was conducted to the bar to hear the solicitor read the charge, impeaching him as a tyrant, traitor, murderer and enemy to the commonwealth of England.

Whatever attributes of weakness may have marred the character of Charles and contributed to his downfall, they were not displayed at his trial; for throughout the ordeal he maintained a dignity and self-possession that was remarkable. While the charge was read, he followed the proceedings with a stern and unmoved countenance, except to smile at some of the terms employed in his denunciation. When Sergeant Bradshaw called upon him to answer the charge, he replied:

"I would know by what power I am called hither; and when I know by what authority, I shall answer. Remember I am your lawful king, and beware lest you bring sin upon your own heads and the judgment of God upon this land. I have a trust committed to me by God by old and lawful descent, and I will not betray it, to answer to a new unlawful authority."

The court answered that it derived its authority from the people of England, of whom Charles was elected king. To this the king made the obvious rejoinder that England was never an elective kingdom, but had been an hereditary kingdom for nearly a thousand years. "Let me see a lawful authority," he continued, "warranted by the word of God, the Scriptures or by the constitution of the kingdom. I will not betray my trust or the liberty of my people. As it is a sin to withstand lawful authority, so it is to submit to a tyrannical or unlawful authority."

Failing to reach an issue with the defendant, the court adjourned to the following Monday. The royal prisoner was then summoned for a second time and pressed to make a positive answer to the charge, either by way of confession or negation. This Charles again declined to do, and instead, renewed his demurrer to the jurisdiction of the judges.

"They sit here," Bradshaw replied, "by the authority of the Commons of England, and all your predecessors and you are responsible to them."

Charles, however, would not concede this point, and still challenged the court to cite one precedent. After a spirited but futile debate, the court again adjourned. A final opportunity was offered the king to plead, and upon persisting in his refusal, his



default was recorded by the clerk. At the next session, seventeen witnesses were examined for the prosecution in order to place on record the fact of the king's participation in the military operations against Parliament. Then several of his papers and letters were read in evidence of his designs against Parliament, after which the court sat in private and passed a vote of condemnation against the monarch, by which his life became forfeit.

On January 27 the king was brought to Westminster to hear his sentence. Before it was pronounced, Charles made a formal request for a joint hearing before the Lords and Commons, but this was denied. The charge was then repeated and sentence pronounced, condemning "Charles Stewart as a tyrant, traitor, murtherer and public enemy, to death by severing his head from his body." The warrant for his execution was signed on January 29 and on the following day the sentence was carried out.

## THE PAPIST PLOTTERS

(1678-1680)

The trials of these unfortunate persons were not in themselves more remarkable than the astounding events which led up to them and which serve to show how a state of panic or prejudice may take such complete possession of men's minds as to render them oblivious to all promptings of reason or compassion.

During the reign of Charles II of England the relations between the Protestants and the Catholics in the kingdom were marked by extreme hostility and distrust. Rumors of Popish designs against the throne and the Church of England were freely circulated and accepted, but they lacked apparent foundation until the year 1678, when one Titus Oates, a Jesuit apostate, came forward with definite accusations against certain persons whom he named as treasonable instruments of the Pope or of the Jesuit order.

According to Oates's narrative, the Pope had nominally assumed the sovereignty of England and Ireland because of the heresy of the king and his people. This sovereign power he had delegated to the Society of Jesuits, and De Oliva, general of that order, had filled by commissions under the seal of

the Society, all the chief offices, both civil and military, in the kingdom. At a special council of the Jesuits the king had been solemnly tried and condemned to death as a heretic. Two men, Grove and Pickering by name, had been employed to shoot the king, for which Grove was to receive fifteen hundred pounds, while Pickering, a devout Catholic, was to be rewarded with thirty thousand masses. Sir George Wakeman, the queen's physician, had also been offered ten thousand pounds to poison the king, but he had demanded fifteen thousand pounds. His demand had been complied with, and five thousand pounds had been paid to him in advance.

This information, in all its minute details, Oates reduced to writing in the form of a deposition which he made before Sir Edmundsbury Godfrey, a noted justice of the peace. Oates was a man of depraved character, and there is little doubt now that his story was fashioned of whole cloth, probably out of revenge against the Jesuits for having expelled him from the order, but at the time it received the fullest credence, and filled the minds of the people with terror.

While the public agitation over the disclosures of Oates was at its height it suddenly assumed the proportions of a panic with the news that Sir Godfrey had been mysteriously murdered. The magis-

trate had been missing for several days when his body was found lying in a ditch, pierced through with his own sword. As his money was still in his pocket and his rings on his fingers it was inferred that he had not been attacked by robbers. The public at once jumped to the conclusion that he had been slain by the Papists on account of having taken Oates' testimony. This tragic occurrence accordingly served in a measure to confirm the charges of Oates, and correspondingly to heighten the terrors of the people. The city of London prepared for its defence as if a siege were imminent, and one prominent official was quoted as saying that were it not for these precautions all the citizens might have their throats cut in a single night.

A proclamation was issued by the king, offering a pardon and a reward of five hundred pounds to any one who should discover the assassins of Godfrey. It was not long before a claimant for the reward appeared in the person of William Bedloe, a man of low birth and a record as unsavory as Oates'. He declared that the murder of Godfrey had been committed in the queen's house by Papists, some of whom were servants in her family. He also unfolded some extraordinary particulars of the Popish plot, especially as to its support by the military and naval forces of France and Spain. He confirmed the report of Oates that the king was

to be assassinated, and added that all Protestants who would not be converted were to be massacred. Without the slightest corroboration of his statements, all of the men whom he accused, including several of the nobility, were thrown into prison.

The first of the alleged conspirators to be tried was Coleman, who, according to the testimony of Oates and Bedloe, had received a commission signed by the superior of the Jesuits, to be Papal secretary of state, and had consented to the assassination of the king. Unhappily for Coleman, the case against him seemed to be strengthened by the production of certain letters which he had written to Catholic dignitaries on the Continent and which, although they did not confirm the accusation of Oates in any of its details, certainly betrayed great indiscretion and excessive zeal. One of them, for example, contained the following passage: "We have here a mighty work upon our hands, no less than the conversion of three kingdoms, and by that perhaps the utter subduing of a pestilent heresy, which has a long time domineered over a great part of this northern world." He was found guilty and sentenced to death, the sentence being carried out soon after.

Coleman's execution was followed by the trial of Father Ireland, who was charged with having

signed the resolution of the Jesuit council to murder the king. The laws of evidence must have been very lax in England at the time, for the priest was convicted without so much as the production of the resolution in question. He even offered good evidence to show that he had been in Staffordshire during the entire month when according to Oates' testimony he was in London. Grove and Pickering, who were accused of having undertaken the assassination of the king, were tried at the same time, and the only evidence against them was the testimony of Oates and Bedloe. The trial, indeed, was a mere form; for all three were condemned beforehand in the opinion of judge and jury. The judge went so far as to affirm publicly that the Papists had not the same principles which Protestants had, and therefore were not entitled to the same credence which the latter enjoyed. When the jury brought in a verdict against the prisoners he said: "You have done, gentlemen, like very good subjects and very good Christians, that is to say, like very good Protestants; and now much good may their thirty thousand masses do them." All three went to execution protesting their innocence.

Hill, Green and Berry were next tried for the murder of Godfrey. Bedloe had accused one Prance, a Catholic silversmith, of being an accom-

plice in the murder. Prance, under the rigors of solitary confinement, finally succumbed to the pressure of his tormentors and confessed to his complicity, thus lending corroboration to the testimony of Bedloe. In spite of many inconsistencies in their testimony, as well as the introduction of contrary evidence on behalf of the defendants, the latter were found guilty and were put to death.

In the same year (1679) five more Jesuits, Whitebread, Gavan, Turner, Fenwick and Harcourt, were brought to trial. In addition to Oates and Bedloe a third witness, Dugdale, appeared against the prisoners. The trial of these men was not essentially different from those which had preceded it. They were found guilty, sentenced to death and executed despite their most solemn protestations of innocence.

The next victim of the people's fanatical rage was Langhorne, an eminent lawyer who looked after the legal affairs of the Jesuits and through whose hands, as Oates and Bedloe testified, had passed all the Papal commissions by which the chief offices in England were filled with Catholics. It was at imminent peril from the mob that Langhorne's witnesses came to the trial, one of them being nearly beaten to death by the rabble. Under the circumstances it is not surprising that Lang-

horne shared the fate of the twelve who had preceded him in this series of trials.

The first check which the prosecution received was at the trial of Sir George Wakeman, the queen's physician who had been accused of an intention to poison the king. Although Oates gave positive evidence of his guilt, there were several circumstances that were favorable to the prisoner, chief of which no doubt was his connection with the queen, against whom no suspicions of guilt were entertained. Even the judge, who on the earlier trials had openly displayed his hostility to the prisoners, now gave a charge to the jury which was favorable to the defendant. The jury, much to the mortification of the prosecutors, returned a verdict of acquittal.

There still remained the impeachment of the Catholic lords who had been imprisoned in the Tower on the accusations of Oates and Bedloe. The aged and infirm Viscount Stafford was selected as the first victim. Three witnesses were produced against him. Oates testified that he saw the Jesuit Fenwick deliver to Stafford a commission signed by De Oliva, appointing him paymaster to the Papal army which was to be levied against England. Dugdale swore that the prisoner had endeavored to enlist his services in the design of



murdering the king; and the testimony of Turberville, the third witness, was to the same effect. This evidence was discredited in many respects by the witnesses for the defence. Dugdale, for example, swore that Stafford had assisted in a council of Catholics held at Tixal, but Stafford proved by his own witnesses that at the time stated he was not at Tixal, but in Bath. Stafford also showed by the testimony of his gentleman and his page, that Turberville had never been seen in his company. Notwithstanding the contradictions and absurdities in the evidence against the prisoner, the peers, after a trial of six days, found him guilty and pronounced sentence of death upon him.

The execution of Stafford seemed to produce a revulsion of feeling in the minds of the populace, with the result that Stafford's was the last life to be forfeited on account of the Papist plot. The infamous author of it, Oates, was five years later convicted of perjury and sentenced to be whipped from Aldgate to Newgate and from there to Tyburn, to be imprisoned for life and to be pilloried five times every year. With the conviction of this notorious scoundrel the remaining lords who had during all these years been imprisoned in the Tower awaiting impeachment, were released, thus closing one of the most shameful chapters in English history.

LADY ALICE LISLE

(1685)

There is a story of a judge in a Western mining town who was notorious for his arbitrary decisions, and who once presided at a murder trial in which the defendant was not produced. After the evidence was all in, the jury retired and soon returned with a verdict of "Not Guilty."

The judge was plainly disappointed. "Not guilty, eh?" he mused. "Well, gentlemen, I guess I'll have to send you back to reconsider your verdict."

With this broad intimation of what was expected of them, the jury withdrew and shortly came back with a verdict of "Guilty."

"Well," remarked the judge with evident relief, "that's more like it. We hanged the prisoner early this morning."

It was very much the same sort of judge that presided at the trial of Lady Alice Lisle in England near the close of the seventeenth century. This was Lord Chief Justice George Jeffreys, who has been described as perhaps the worst judge that ever disgraced Westminster Hall.

Lady Alice Lisle was the widow of John Lisle, who was one of the judges at the trial of King

Charles I and who was subsequently placed on trial himself as one of the regicides. In the month of July, 1685, shortly after the capture of the Duke of Monmouth and the rout of his army, two of the refugees from his camp, Hicks and Nelthorp, sent a messenger to the home of Lady Lisle, a woman of great piety and charity, as well as loyalty to the king, to ask whether she would receive them in her home. She sent word that she would receive them on a certain evening. When they arrived they were met by Lady Lisle, who knew Hicks as a violent preacher among the dissenters. But when she learned that they had been with the Duke of Monmouth she became alarmed; she left their presence and ordered her servant to lodge an information against them with the nearest justice of the peace. Before this could be done, however, their presence in her house had been reported by another man who had acted as guide to Hicks' messenger on his errand to Lady Lisle. The house was surrounded and searched; Hicks and Nelthorp and their messenger, Dunne, were seized and Lady Lisle herself was arrested for harboring them.

Lady Lisle, who was the first one of the group to be arraigned, was then put on trial before Lord Chief Justice Jeffreys, of whom it is reliably reported that he had resolved beforehand to make

an example of her, and had even obtained of the king his promise that he would not pardon her. The trial is a remarkable one chiefly because of the judge's high-handed domination of the proceedings and the lengths to which he went in brow-beating witnesses and intimidating the jury.

The case for the prosecution was that Hicks and Nelthorp had been in Monmouth's army; that Lady Lisle with knowledge of that fact had secretly harbored them in her home; and that when questioned by the king's officers she had denied their presence. After Hicks' messenger had been sworn, the king's counsel observed to the court that Dunne was a very unwilling witness, and requested the court on that account to examine him a little more strictly. How enthusiastically the judge responded to this suggestion is indicated by the following extract from his opening remarks to the witness:

LORD CHIEF JUSTICE: "Hark you, friend, I would take notice of something to you by the way, and you would do well to mind what I say to you. I would not by any means in the world endeavor to fright you into anything, or any ways tempt you to tell an untruth, but provoke you to tell the truth, and nothing but the truth. I charge thee, therefore, as thou wilt answer it to the great God, the

judge of all the earth, that thou do not dare to waver one tittle from the truth, upon any account or pretence whatsoever; for that God of Heaven may justly strike thee into eternal flames, and make thee drop into the bottomless lake of fire and brimstone, if thou offer to deviate the least from the truth. For I tell thee God is not to be mocked, and thou canst not deceive him though thou may'st us. But I assure you, if I catch you prevaricating in any the least tittle (and perhaps I know more than you think I do) I will be sure to punish every variation from the truth that you are guilty of."

Having delivered himself of this gentle admonition, the judge proceeded, by a course of adroit and insidious questioning, so to fluster the luckless witness that before long he probably did not know whether his head was on his shoulders or off. After Dunne had been trapped into the admission that Lady Lisle had asked him whether the guide who had conducted him to her house knew anything of the business on which he had come, the judge asked him what that business was. Dunne did not answer at once, but stood pondering a while.

LORD CHIEF JUSTICE: "He is studying and musing how he should prevaricate; but thou hadst better tell the truth, friend; remember what thou hast said already; that thou didst tell that man that the

lady asked you whether he knew anything of the business and thou toldest her he did not. Now I would know what that business was?"

DUNNE: "That business that Barter did not know of?"

LORD CHIEF JUSTICE: "Yes, that is the business; be ingenuous, tell the truth. Oh! how hard the truth is to come out of a lying Presbyterian knave!"

DUNNE: "My lord, I do tell the truth, as far as I can remember."

L. C. J.: "Then what was that you told my lady Lisle that Barter did not know?"

D.: "What Barter did not know, my lord?"

L. C. J.: "Ay, is not that a plain question? Of all the witnesses that ever I met with, I never saw thy fellow.—I hope, gentlemen of the jury, you take notice of the strange and horrible carriage of this fellow. Good God! that ever the thing called religion should ever wind up persons to such a height of impiety that it should make them lose the belief that there is a God of truth in Heaven, that sees and knows, and will take vengeance of falsehood and perjury.—And thou wicked wretch, how durst thou appear to give testimony before even an earthly tribunal with so much impudence and falsehood, when every lye will cost thee so dear?"

D.: "My lord, I tell thee the truth."

L. C. J.: "Did she ask thee whether that man knew anything of a question she had asked thee, and that was only of being a nonconformist?"

D.: "Yes, my lord, that was all."

L. C. J.: "That is all nonsense; dost thou imagine that any man hereabouts is so weak as to believe thee?"

D.: "My lord, I am so baulked, I do not know what I say myself; tell me what you would have me to say, for I am cluttered out of my senses."

Col. Penruddock, who made the arrest, was put on the stand to testify that when Lady Lisle was brought before him she told him that she knew nothing of the presence of Hicks and Nelthorp in the house. The defendant then took the stand and testified in her own behalf. She declared that she knew of nobody's coming to her house but Mr. Hicks, and her reason for having him come secretly at night was that she understood that warrants were out against him for preaching in private meetings; but she had never heard that he was in Monmouth's army, or that Nelthorp was with him. She forswore any connection or sympathy with the late rebellion and protested her firm allegiance to the king, reminding the court that her own son had fought on the king's side. The only other witness for the defence was one George Creed, who

testified to a conversation with Nelthorp to substantiate the defendant's statement that she knew nothing of his coming.

The judge then delivered his charge to the jury, which was more like the closing arguments of a prosecutor. He even made statements which in a modern criminal court would be sufficient grounds for reversal if made by a prosecuting attorney, for he referred to the part which the prisoner's late husband had taken in the trial of King Charles I. Before the jury withdrew some of them asked the judge whether it was the same thing in point of law to receive Hicks before he was convicted of treason as if it had been after. The judge replied that it made no difference.

The jury then retired and shortly returned with a verdict of acquittal, but the judge in great fury sent them back to reconsider their verdict. Three times in all they returned with the same verdict, which the judge refused to accept, threatening the jury with attain of treason if they should persist in such verdict. To this pressure the jury finally succumbed and brought in a verdict of guilty. The prisoner was condemned to be burned alive; but on her earnest petition to the king the manner of execution was changed to beheading and so carried out.



Four years later the conviction and attainder of Lady Lisle was repealed on the ground that she had been indicted for entertaining John Hicks, a traitor, knowing him to be such, whereas the said John Hicks was not at the time of her trial attainted or convicted of any such crime.

## WARREN HASTINGS

(1788-1795)

The trial of Warren Hastings is noteworthy as the longest impeachment trial on record, over seven years having elapsed from the beginning of the trial before a verdict was rendered.

Hastings was the first Governor General of India, and held that office from the time of his appointment in 1773 to the date of his resignation on February 1, 1785. His administration, although now conceded to have been a progressive and efficient one, was marked by violent feuds between himself and three out of the four members of the council associated with him in the government of Bengal. He had to contend also with rebellious native princes whose opposition had been aroused by the peculations and other high-handed practices of the East India Company's agents.

Hastings' bitterest enemy on the council was Philip Francis, of whom Hastings at one time recorded in an official minute that he had found his conduct to be void of truth and honor. This resulted in a duel, in which Francis was wounded. He returned to England, where he circulated reports injuriously reflecting upon Hastings' character and the administration of his office. Among

the public men whose minds were thus poisoned against Hastings was Edmund Burke, famous parliamentarian and orator.

Shortly after resigning his office Hastings set sail for England, where he arrived in June, 1785. Although it was freely rumored that Burke was laying plans to demand the impeachment of Hastings, no move in that direction was made that year. On February 17, 1786, Burke moved in a Committee of the whole House for the production of certain correspondence between Hastings and the Court of Directors of the East India Company. After prolonged debate his motion was lost, the House taking the position that the accuser should first state his case and then request the production of the documents to support it. Burke accordingly brought forward, on April 4, eleven of the charges on which the proposed impeachment of Hastings was grounded. These charges imputed to him, in substance, injustice and cruelty to the natives; the impoverishment of certain provinces through waste, extortion and maladministration; and the enrichment of Hastings and his favorites through bribery and misuse of his powers.

Hastings obtained permission from the House to conduct his own defence, but was allowed only five days in which to prepare it. His reply was com-

pleted on May 1 and read to the House on that day and the following. The House then proceeded with the examination of witnesses, which lasted several weeks. This was followed by a debate on the various charges considered separately. Throughout these proceedings William Pitt, the Prime Minister, had displayed a friendly attitude toward the accused, and Hastings felt assured that when the motion to impeach should be put to a vote, Pitt would cast his vote against it.

On June 13 occurred the memorable debate on the charge of extortion in the form of a penalty of five hundred thousand pounds which had been exacted from Chet Singh, Rajah of Benares, because of his failure to pay an annual levy of fifty thousand pounds for purposes of defence. When Pitt rose to speak to this charge every one expected that he would support Hastings, because only the evening before, he had caused circulars to be distributed, urging the supporters of the Ministry to vote against impeachment. In his opening remarks he did say that Hastings had a right to impose a fine on the Rajah, but in conclusion he asserted that such a huge penalty destroyed all relation between the degrees of guilt and punishment, and that Hastings must have intended to inflict a penalty utterly disproportionate to the offence. He then

announced, to the amazement of his friends, that he intended to vote for the motion. This sudden change of front by Pitt practically decided the issue, for the motion to impeach was carried and Burke was nominated to head the Committee of Impeachment. It was not until May of the following year, 1787, that Burke formally impeached Hastings at the bar of the House of Lords. Hastings was taken into custody, but promptly released on bail to await his trial.

On February 13, 1788, the Lords assembled in Westminster Hall for the beginning of the trial. It was indeed a memorable occasion, and has been fittingly described in its most picturesque aspects by Thomas B. Macaulay in one of his essays. The first two days of the trial were occupied in reading the impeachment charges and the reply of Hastings. On the third day Burke began his argument for impeachment in an oration which a contemporary writer has described as "unequalled either in antiquity or in any modern period of time." For four days he continued his malignant denunciation of Hastings in language which wrought up some of his feminine hearers to a state of hysterics.

Burke's address was followed by the examination of witnesses, which continued through the months of March, April and May. During the first

week in June the proceedings were enlivened by a brilliant address by Richard B. Sheridan, one of the impeachment managers. Sheridan's powers as a speaker, considerably heightened by his skill in theatrical effects, attracted a larger attendance than usual, and Lord Macaulay heard that fifty guineas had been paid for a ticket of admission. After Sheridan's speech, public interest in the trial began to flag. By the end of the year only two of the twenty charges in the articles of impeachment had been considered. The illness of the King and other pressing issues obtruded themselves upon the attention of Parliament and the public, and during the following year only seventeen days were devoted to the trial of Hastings. In 1790 the situation was the same, and the impeachment tribunal sat for only a fortnight.

In May, 1791, Hastings made a formal protest to his judges against the perpetual delays in the prosecution of his trial. This had the desired effect, and the prosecution closed its case that month. Hastings then read his defence, in which he stated that all of the thirty-four witnesses which he had called originally to testify for him were either dead or dispersed, he knew not where. He expressed his willingness to waive his defence and requested the Tribunal to pronounce sentence at once.

He declared that he had never intentionally sacrificed the interests of his country to his personal advantage, and that according to his best skill and judgment he had invariably promoted the essential interests of his subordinates, the happiness and prosperity of the people committed to his charge and the welfare and honor of his country. "I am arraigned," he said, "for desolating the provinces in India which are the most flourishing of all the States in India. It was I who made them so. I gave you all; and you have rewarded me with confiscation, disgrace and a life of impeachment."

Nothing more was done that year. In February, 1792, some of Hastings' witnesses having returned in the meantime, the defence introduced its testimony. This dragged on until October, when the trial was again adjourned indefinitely. For over two years the case was totally neglected. Early in 1795 the House of Lords resolved themselves into a Committee of the Whole to consider the evidence. On April 23 they rendered their verdict of honorable acquittal for Hastings. He left the court a ruined man, his entire fortune having been consumed in the conduct of his defence. The Court of Directors of the East India Company, however, came to his aid and made ample provision for his declining years.

THOMAS PAINE

(1792)

The trial of Thomas Paine was unique in that the defendant was not in custody and not even within the jurisdiction of the trial court. The trial took place in London on December 18, 1792. The indictment charged Paine with the publication of a seditious libel in the form of his pamphlet entitled "The Rights of Man" which had been widely circulated throughout the kingdom for some months before his trial. The first part of this treatise, which appeared in March, 1791, had passed unnoticed so far as any action by the British authorities was concerned, but the second part was such a scathing arraignment of British institutions and received such wide publicity, that the Attorney General decided, if only for the moral effect of the proceeding, to prosecute the author, although he was at the time residing in France.

The publication of the libel was established by the testimony of the printer who had received Paine's manuscript and printed the pamphlet. The trial consisted principally in the address of the Attorney General to the jury, in the course of which he read and commented upon certain passages from



Paine's work, and the reply of Hon. Thomas Erskine, who for the sake of appearances had been assigned to conduct the defence. Among the passages from Paine's pamphlet which were read by the prosecution were these:

"All hereditary government is in its nature tyranny. An heritable crown, or an heritable throne, or by what other fanciful name such things may be called, have no other significant explanation than that mankind are heritable property. To inherit a government is to inherit the people, as if they were flocks and herds.

"With respect to the two Houses of which the English Parliament is composed, they appear to be effectually influenced into one; and, as a legislature, to have no temper of its own. The minister, whoever he at any time may be, touches it, as with an opium wand, and it sleeps obedience.

"But if we look at the distinct abilities of the two Houses, the difference will appear so great as to show the inconsistency of placing power where there can be no certainty of the judgment to use it. Wretched as the state of representation is in England, it is manhood compared with what is called the House of Lords; and so little is this nicknamed House regarded, that the people scarcely inquire at any time what it is doing. It appears

also to be most under influence, and the furthest removed from the general interest of the nation.

"Having thus glanced at some of the defects of the two Houses of Parliament, I proceed to what is called the crown, upon which I shall be very concise:

"It signifies a nominal office of a million a year, the business of which consists in receiving the money; whether the person be wise or foolish, sane or insane, a native or a foreigner, matters not. Every minister acts upon the same idea that Mr. Burke writes; namely, that the people must be hoodwinked and held in superstitious ignorance by some bugbear or other; and what is called the crown answers this purpose."

The Attorney General also introduced a letter which he had received from Paine, reading in part as follows:

"You have as Attorney General commenced a prosecution against me as the author of the Rights of Man. Had not my duty in consequence of my being elected a member of the National Convention of France, called me from England, I should have staid to have contested the injustice of that prosecution; not upon my own account, for I cared not about the prosecution, but to defend the principles I had advanced in the work.

“The duty I am now engaged in is of too much importance to permit me to trouble myself about your prosecution; when I have leisure I shall have no objection to meet you on that ground; but as I now stand, whether you go on with the prosecution, or whether you do not, or whether you obtain a verdict or not, is a matter of the most perfect indifference to me as an individual. If you obtain one (which you are welcome to if you can get it), it cannot affect me, either in person, property or reputation, otherwise than to increase the latter; and with respect to yourself, it is as consistent that you obtain a verdict against the man in the moon, as against me; neither do I see how you can continue the prosecution against me as you would have done against one of your own people, who had absented himself because he was prosecuted.

“My necessary absence from your country affords the opportunity of knowing whether the prosecution was intended against Thomas Paine, or against the rights of the people of England to investigate systems and principles of government; for as I cannot now be the object of the prosecution, the going on with the prosecution will show that something else was the object, and that something else can be no other than the people of England; for it is against their rights, and not against me, that

a verdict or sentence can operate, if it can operate at all. Be then so candid as to tell the jury whom it is you are prosecuting, and on whom it is that the verdict is to fall."

Mr. Erskine stated to the jury in his address for the defence that he was and always had been attached to the principles of the British government, and that the sole basis of his defence was the liberty of the press. He argued that every man, not intending to mislead, but seeking to enlighten others, with what his own reason and conscience, however erroneously, had dictated to him as truth, had a right to address himself to the whole nation, either upon the subject of governments in general or upon that of his own particular country. He protested against the introduction of Paine's letter as having been written subsequent to the indictment, and contended that the cause of the defendant had been prejudged by reason of the bitter attacks upon Paine in the press and in public gatherings. At the conclusion of his lengthy and eloquent plea for freedom of the press the Attorney General rose to reply, but the foreman of the jury announced to the court that a reply was not necessary. The Attorney General resumed his seat and the jury immediately returned a verdict of guilty.

## J. THOMPSON CALLENDER

(1800)

Never was counsel for defendant more persistently harassed by irascible judge than were the three distinguished members of the Virginia bar who conducted the defence of J. Thompson Callender for violation of the Sedition Act of 1798 before Judge Samuel Chase of the United States Circuit Court, who was an American counterpart of the notorious Lord Jeffreys in England.

The Sedition Act was the first Federal enactment in this country against freedom of speech and the press. It imposed a maximum penalty of five years' imprisonment and \$5,000 fine for writing, printing, uttering or publishing any false, scandalous and malicious statements against the United States government or either House of Congress or the President of the United States with intent to bring the government or any of its officials into contempt or disrepute. The Act was not a popular one, but there was strong provocation for its enactment in the scurrilous attacks which had been made by malcontents, some of whom were not even citizens, against the administration of President Adams.

Callender himself had come into some prominence, as editor of the Richmond "Examiner", by reason of

his venomous attacks on the President, culminating in the publication of his pamphlet entitled "The Prospect Before Us," in which he characterized the President as a professed aristocrat who had proved faithful and serviceable to the British interest. The reign of Mr. Adams, he charged, had been one continual tempest of malignant passions, and the grand object of his administration had been to exasperate the rage of contending parties and to calumniate and destroy every man who differed from him.

Callender was indicted by the Federal grand jury and placed on trial in the United States Circuit Court at Richmond, Va., on May 28, 1800. Great popular interest was manifested in the trial because some of Virginia's most eminent counsel, Philip N. Nicholas, George Hay and William Wirt, had been retained to defend the prisoner, and also because of Judge Chase's crotchety tendencies and his known bias against the defendant.

At the beginning of the trial counsel for the defence obtained an adjournment until June 3 because of the absence of material witnesses. The first clash between the defence and the court occurred in connection with a motion for further postponement until the November term, which was denied by the court. In the course of his argument on the motion Mr. Hay

casually referred to the possible assessment of a fine by the jury.

"You are mistaken," interrupted Judge Chase, "in supposing that the jury has a right to assess the fine. It may be conformable to your local State laws, but it is a wild notion as applied to the Federal Court. It is not the law."

When the first juror was called, Mr. Hay asked permission to put a question to him. The Judge said that he must first hear the question, and if he thought it a proper one, it might be put. Hay's question was "Have you ever formed and delivered an opinion on the book entitled 'The Prospect Before Us' from which the charges in the indictment are extracted?"

"That question is improper," replied the Judge, "and you shall not ask it. The only proper question is 'Have you ever formed and delivered an opinion on this charge?' Such a question as you propose would prevent the man from ever being tried—the whole country have heard the case, and very probably formed an opinion. He has answered that he never saw the indictment, nor heard it read, and if he has neither read nor heard the charges, I am sure he cannot have formed or delivered an opinion on the subject."

When the jury had been sworn they heard the indictment read by the clerk and the opening address of

the district attorney. Before the government called its witnesses Mr. Hay rose to remark that some of the witnesses who were to be examined to prove the guilt of the accused were equally guilty with him for having printed or circulated the libel in question. He accordingly suggested to such witnesses that they were not bound to accuse themselves, and could therefore withhold any evidence which had a tendency to incriminate themselves.

The judge acknowledged the correctness of this view, but assured the witnesses that the United States government was pledged not to institute a prosecution against them. The printing and circulation of the libelous pamphlet was then established for the prosecution by the testimony of the printer and persons who had purchased or received copies. The district attorney then offered a copy of the pamphlet in evidence. To this Mr. Hay objected on the ground that the indictment had set forth only certain libelous passages without mentioning, by name or otherwise, the pamphlet from which they were taken. He therefore argued, on the principle, that the proof must conform strictly to the indictment, that the pamphlet itself could not be adduced in evidence. He cited a number of cases and authorities in support of his argument.



To all of which Judge Chase replied: "You are certainly mistaken in your statement of the law as applied to the case now before the court. In the cases you mention there is really a variance between the indictment and the evidence. But this case is very different; there is no variance. You insist that the whole original, including the title, must be copied in the indictment *verbatim et literatim*. I wonder you did not add *et punctuatim* also. There is no real variance, and there is an end of the objection. You are mistaken. I pronounce this to be the law, and I shall instruct the jury that they may find the traverser guilty of part of the charges and acquit him of such as are not proved."

When Mr. Hay called his first witness the Judge asked him what he intended to prove by his testimony. Hay replied that he intended to prove justification for some of the charges in the pamphlet. Chase insisted on having a statement in writing of the questions which Hay intended to put to the witness. When the questions were written out and submitted to Chase he ruled that the testimony would be inadmissible because it would justify only part of the charges. When Hay pressed him with further argument Chase sought to shift the responsibility to the district attorney by asking him whether he would consent to the questions, but the latter declined to do so.

Mr. Wirt, realizing that the case looked rather dark for his client, now took a hand. Addressing the jury, he remarked that the situation of the defendant and his counsel was extremely embarrassing; that he had not been able to procure the testimony essential to his defence, nor were his counsel prepared at this time to defend him. The conduct of the court, he added, was apparently precipitate in not postponing the trial. The Judge told Wirt that he must not reflect on the court. Wirt resumed his address to the jury, passing on abruptly to the law of the case, since the jury had the right to determine the law as well as the facts. The Federal Constitution, he said, is the supreme law of the land; and a right to consider the law is a right to consider the Constitution. If the law under which the prisoner was indicted was an infraction of the Constitution it lacked the force of a law and they could not then find the prisoner guilty.

"Take your seat, sir, if you please!" thundered the Judge. "I tell you that this is irregular and inadmissible; it is not competent to the jury to decide this point." He then proceeded with a lengthy argument in support of his ruling. At the close of his argument Mr. Hay rose to say that he agreed with Mr. Wirt, and that the jury had a right to consider not only whether the acts charged constituted a libel as defined by the law, but also to consider whether the law itself

was constitutional. After being interrupted several times by the Judge, Hay folded up his papers and refused to proceed further, although the Judge assured him that he would not be interrupted again. The court then delivered a lengthy charge to the jury, which returned a verdict of guilty after two hours' deliberation. The defendant was sentenced to a fine of \$200 and nine months' imprisonment. He was also required to find sureties for good behavior for a period of two years.

Five years afterwards Judge Chase was tried by the United States Senate for his oppressive and vexatious conduct during this trial and for his indecent solicitude for the conviction of the accused. He was acquitted, however, after a brilliant defence conducted by Luther Martin.

ROBERT EMMET

(1803)

Robert Emmet, a talented young Irishman of a highly respectable family, was the central figure of an incipient and unsuccessful insurrection in Dublin against the British government in July, 1803. During the previous year he had visited France, where he entered into relations with the United Irishmen, an organization of Irish insurgents who were living in exile following their unsuccessful rebellion of 1798. He also had an interview with Napoleon Bonaparte, who led him to believe that a French invasion of England might be looked for in the month of August, 1803. At the instigation of leaders of the United Irishmen he undertook, upon his return to Ireland in October, 1802, to organize the revolutionary factions in Ireland in renewed efforts to throw off the British yoke. Acting upon information that seventeen counties were ready to take up arms if a successful effort were made in Dublin, he placed himself, on the evening of July 23, 1803, at the head of a band of about 150 men in a march on Dublin Castle. Emmet's plans, according to his own account made public after his death, had been carefully laid for a concerted and well-organized attack from three separate quarters,

but his plans miscarried most dismally, and his own meager contingent was the only one which started out at the appointed time. On the way to the castle they met the carriage of Lord Kilwarden, who was proceeding to a hastily summoned meeting of the privy council. He was dragged from his carriage and murdered by the rebels, who were shortly afterwards dispersed by a detachment of royal soldiers. Emmet escaped to the Wicklow mountains, where he remained in hiding for a few days. He then took refuge in the house of a friend at Harold's Cross, near Dublin, in order to be near his fiancée, Sarah Curran. Here he was captured on August 25th. He was indicted on the charge of high treason and placed on trial in Dublin on September 19, 1803. He was defended by Leonard MacNally, the notorious informer, who is reputed to have sold the contents of his brief to the lawyers for the Crown for the sum of two hundred pounds before appearing in court.

The prosecution opened its case with the testimony of witnesses showing that the defendant had leased certain premises in Dublin under the name of Robert Ellis, and that these premises were used for the storing of arms, ammunition and military uniforms under the superintendence of the defendant. A proclamation to the citizens of Dublin, a draft of which was found on these premises, was read into evidence. In

this document the people were called upon to aid the conspirators in their efforts to give freedom to their country and to end the career of English oppression. They were urged to "hurl stones, bricks, bottles and all other convenient implements on the heads of the satellites of your tyrant, the mercenary, the sanguinary soldiery of England."

John Fleming, who had been in the confidence of the conspirators and then turned king's evidence, testified to their assemblage on the night of July 23d and of their advance on the castle under the leadership of Emmet. Major Henry Charles Sirr, who had arrested the prisoner, told of a paper which he had found on a chair in his room. This paper was also read into evidence. It was addressed to the British government, and in it the writer frankly avowed himself to be an enemy of the government and engaged in a conspiracy for its overthrow.

After the Crown had concluded the presentation of its case Mr. MacNally announced that the defendant did not intend to call any witness or make any observations upon the evidence. The prosecution then summed up the evidence for the Crown, after which the court delivered its charge to the jury. The jurymen did not retire from the box, and after a few minutes' deliberation the foreman announced that they found the prisoner guilty. In response to the

usual question put to him by the court, what he had to say why judgment of death should not be pronounced against him, Emmet launched into a lengthy and eloquent defence of his motives, without any attempt to rebut the evidence, except to deny the imputation that he had been an emissary of France. He concluded his address in the following words:

“Let no man write my epitaph. I am here ready to die. Let my character and my motives rest in obscurity and peace, till other times and other men can do them justice. Then shall my character be vindicated. Then may my epitaph be written.”

Sentence of death was then pronounced by the court, and the prisoner was executed the next day.

## AARON BURR

(1807)

Col. Aaron Burr, former vice president of the United States under President Jefferson, was accused early in the year 1807 of treasonable designs against the United States government in connection with an alleged conspiracy to invade Mexico, seize the city of New Orleans, separate the states west of the Mississippi from the rest of the Union and set up an independent government there. The chief informer against him was General James Wilkinson, commander of the United States army at New Orleans, who had been in Burr's secret and to whom Burr, according to his account, had offered a high command in the projected expedition. Wilkinson's charges were confirmed by the disclosures of one General Eaton, who divulged information regarding an armed force which had been mustered on Blennerhassett's Island, the estate of an intimate friend of Burr's.

Burr was arrested on February 19, and on March 30 he was arraigned before Chief Justice Marshall in Richmond, Va. He was first released under \$5,000 bail and the following day arguments were heard on the motion of U. S. District Attorney George Hay to commit the prisoner to jail on the charge of treason.



The debate on this motion continued until April 1, when Justice Marshall ruled that upon the evidence submitted he could not consistently insert in the commitment the charge of high treason, but only that of misdemeanor in connection with the proposed invasion of Mexico. Bail was fixed at \$10,000 and the case was set for the next term of the Circuit Court beginning May 22.

When the court convened on May 22 the proceedings were opened with the selection of the grand jury, which, as finally sworn, included some of the most distinguished personages in America, with John Randolph of Virginia as foreman.

The presentation of evidence before the grand jury had proceeded for several weeks when the defendant, who actively superintended the conduct of his own defence, sprang a surprise by calling upon the court to issue a subpoena to President Thomas Jefferson, requiring him to produce certain papers which Burr considered essential to his defence. This precipitated a violent argument between the District Attorney and Luther Martin of counsel for the defence, on the question of the legality of such a subpoena. Justice Marshall decided that the subpoena could be issued, and so it was. Burr was considerate enough to stipulate that the timely transmission to the clerk of the court of the documents described would be accepted

as sufficient observance of the process without the personal attendance of the President.

On June 13 General Wilkinson, the principal witness for the prosecution, arrived. The prosecution had placed its chief reliance on the testimony which he had to offer, because he was supposed to be in possession of all the essential facts of the great conspiracy. The lawyers for the defence, however, established upon cross-examination of Wilkinson that he had altered parts of a certain cipher letter offered in evidence against Burr, and had omitted sentences tending to incriminate himself.

The grand jury on June 24 brought in indictments for treason and misdemeanor against Burr and Harman Blennerhassett. Mr. Hay again moved for Burr's commitment to prison. Burr offered to prove that the indictments had been found on perjured testimony and asked to be released on bail. Hay's motion prevailed and Burr was imprisoned in the common jail. After he had spent two nights there, application was made to the court for his transfer to other quarters on the certificate of a physician that his confinement in jail was injurious to his health. The court accordingly directed that he be lodged, under suitable guard, in the house of Luther Martin. From this place he was subsequently removed to the

state penitentiary to await his trial, which was set for August 3.

The lawyers assembled in the court room when the trial began represented as brilliant an array of legal talent as ever adorned a judicial proceeding in this country. The senior counsel for Burr was Edmund Randolph, former attorney general and governor of Virginia. Associated with him were John Wickham, one of Virginia's foremost lawyers; Luther Martin, bibulous, pugnacious and vitriolic of utterance when aroused; Benjamin Botts, distinguished member of the Virginia bar; Charles Lee, ex-attorney general of the United States and Jack Baker, noted for his wit and past master of repartee. Opposed to this formidable group were George Hay, the District Attorney, who was a son-in-law of James Monroe, future president of the United States; William Wirt, a conspicuous member of the Richmond bar and Alexander McRae, lieutenant-governor of Virginia.

The first two weeks of the trial were consumed in impanelling the jury. The popular feeling against Burr and the belief in his guilt were so strong that it was found extremely difficult to find a juror who was not prejudiced against the defendant. Of the first panel of forty-eight men only four were accepted; in the second panel not one was found acceptable to the defence. Rather than submit to further delay, Burr

finally agreed to the selection of men on the jury who admitted some prejudice against him. The jury was finally completed and the taking of testimony begun on August 17.

In order to prove its case the government was bound to establish the commission of an overt act of treason by the testimony of two credible witnesses. The first witness was General Eaton, to whose testimony the defence interposed an objection at once unless he could testify to some overt act of the defendant. The witness admitted that he had no knowledge of any such act, but said that he could testify to Burr's expressions of treasonable intentions. The court ruled that any proof of intention formed before the act charged in the indictment, if relevant to the act itself, was admissible, but not otherwise. Eaton then went on with his testimony, in which he told of Burr's efforts to induce him to accept a military command in his expedition.

Eaton's testimony was followed by that of others along the same line—men who had discussed Burr's plans with him, and others who gave an account of the mustering and drilling of an armed force on Blennerhassett's Island. None of the witnesses, however, was able to connect the defendant directly with any treasonable act.

On August 20 Mr. Wickham moved for the suspension of further testimony on the ground that the prosecution was unable to produce any witness who could testify to an overt act. For ten days the court room was the scene of a picturesque and hotly contested battle over this motion. The argument was brought to a close by Mr. Martin, who began his address on August 28 and completed it the following day. On August 31 Chief Justice Marshall delivered his opinion, which took him three hours to read. Mr. Wickham's motion was granted, on the ground that "if the overt act be not proved by two witnesses, all other testimony must be irrelevant." This ruling was equivalent to a directed verdict for the defendant. When the case was given to the jury the next day they returned with the following verdict: "We of the jury say that Aaron Burr is not proved to be guilty under this indictment by any evidence submitted to us. We therefore find him not guilty." Burr promptly rose to object to this "Scotch" verdict and Justice Marshall thereupon directed that the verdict be entered on the record in the usual form of "Not Guilty."

ANDREW JACKSON  
(1815)

For a short period of time after the defeat of the British at the battle of New Orleans the city was under martial law, with General Andrew Jackson in command. Jackson ruled the city with an iron hand, and in order to escape his domination some of the French troops occupying the city and even some of the French civilian residents who had become naturalized, placed themselves under the protection of the French consul, M. Toussard. Jackson promptly countered with an order directing the consul and all other Frenchmen who were not citizens of the United States to leave New Orleans within three days and not return to within 120 miles of the city until news of the ratification of the treaty of peace with England was officially published.

A few days later, on March 3, 1815, the Louisiana "Courier" published a letter from a reader signing himself "A Citizen of Louisiana of French Origin," in which General Jackson was bitterly assailed for his mandate against the Frenchmen. When Jackson read the letter he sent for the editor and learned from him that the writer of the letter was a Mr. Louaillier, a member of the Louisiana Legislature.

On the following Sunday, March 5, Louaillier was walking along the levee near a well-known coffee house when he was arrested and taken to prison by order of General Jackson. A lawyer named Morel who witnessed the arrest made application to Judge Dominick A. Hall of the U. S. District Court for a writ of habeas corpus on behalf of Louaillier. The writ was granted and served upon Jackson, requiring him to produce the prisoner before Judge Hall on the following day. Instead of obeying the writ, the General seized it from the man who had served it and dispatched one of his own officers to arrest Judge Hall on the charge of inciting mutiny within the military encampment. Hall was promptly seized and lodged in the same prison with Louaillier. Jackson also caused the arrest of a prominent citizen of New Orleans named Hollander, who had been overheard to remark of Jackson's action with respect to the French, that it was a dirty trick.

About a week after the arrest of Judge Hall he was conducted under Jackson's orders to a point beyond the lines of the American encampment and set at liberty with the following message from the General: "I have thought proper to send you beyond the limits of my encampment, to prevent a repetition of the improper conduct with which you have been charged. You will remain without the lines of my sentinels

'until the ratification of peace is regularly announced, or until the British shall have left the southern coast."

On the following day, March 13, an official courier arrived from Washington to announce the ratification of the treaty of peace with Great Britain. Martial law was at once abrogated and General Jackson issued a proclamation of pardon for all military offences and the release of all prisoners held under such charges. Louaillier was accordingly freed and Judge Hall returned to his home.

On March 22, on motion of U. S. District Attorney John Dick in Judge Hall's court, an order was issued directing Jackson to show cause why an attachment should not be awarded against him for contempt of the court in having disregarded the writ of habeas corpus and imprisoned the honorable judge of the court.

Instead of appearing in court on the return day the General sent his counsel, Edward Livingston, who came prepared to read an elaborate defence of the General's conduct, based on the exigencies of martial law. The judge refused, however, to be influenced by the arguments advanced and ordered the attachment to be sued out, returnable on March 31.

The General appeared in court that day in civilian attire, with a numerous following of his friends and admirers. The proceedings were delayed for some



time by the shouts and applause of the spectators. Jackson mounted a bench and addressed the crowd, exhorting them to be silent and to respect the dignity of the court. When silence had been restored the judge rose and announced that the court would be adjourned because it was not possible to proceed under such circumstances. Jackson remonstrated with him and assured him that "the same arm that protected from outrage this city against the invaders of the country, will shield and protect this court, or perish in the effort."

The court then proceeded to business, the District Attorney opening with a list of interrogatories directed to the General, bearing on the arrest of Louailier and the events that followed. Jackson, however, refused to answer any of these questions, stating to the court that in the paper previously presented by his counsel he had set forth a complete defence of his conduct. As there was nothing he could add to that paper, he said, he was prepared to receive the sentence of the court.

The court thereupon pronounced its judgment, that the defendant pay a fine of one thousand dollars to the United States.

When court adjourned the General was borne away by a crowd of his admirers. Outside they commandeered a private carriage, dispossessed its patrici-

an occupant, unharnessed the horses, seated Jackson inside and conveyed him in triumph through the streets. Upon his return to his quarters Jackson immediately wrote out a check for a thousand dollars and sent it to the court by his aide-de-campe. Twenty-nine years later the full amount of this fine, with interest added, making a total of \$2,700, was refunded to Jackson by act of Congress.

## THE DRED SCOTT CASE (1847-1857)

This famous case attracted no attention when it was first tried in the Circuit Court of St. Louis County, Missouri, in June, 1847, nor for several years afterwards, until it reached the Supreme Court of the United States in 1854. Because of its far-reaching effect on the anti-slavery agitation which was approaching a crucial stage at the time, it deserves mention among the famous trials of history.

Dred Scott was a negro slave born in Virginia who was taken as a young man to St. Louis, where he was sold to John Emerson, an army surgeon. In the year 1834 he accompanied his new master to Rock Island, a military post in Illinois to which Emerson had been transferred, and later to Fort Snelling, Wisconsin, both of these places being on free soil. At Fort Snelling Scott was married to another slave named Harriet, who bore him two children.

In 1838 Emerson moved back to Missouri, bringing his slaves with him. Six years later he died in Iowa, leaving all of his property, including his slaves, to his wife and daughter. His wife, Irene Emerson, and his brother-in-law, John F. A. Sanford, were named executors in his will.

Mrs. Emerson was not in sympathy with slavery and she had no particular use for the slaves, which had been left to her in trust under her husband's will. Shortly after Emerson's death she removed to the East and left Scott and his family to shift for themselves. Acting upon the advice of local attorneys, Dred Scott then brought suit against Mrs. Emerson for his freedom, on the ground that his removal into territory where slavery was illegal under the Missouri Compromise and other Acts of Congress had effected his emancipation. His petition was filed on April 6, 1846, but it was not tried until June 30, 1847, when the jury returned a verdict for the defendant. Scott's attorneys moved for a new trial on the ground of surprise testimony, and this was granted by the court.

The second trial took place in January, 1850, and resulted in a victory for the plaintiff. Mrs. Emerson's lawyers moved for a new trial on the ground that the verdict was contrary to the law and against the weight of the evidence, and that the court had erred in its charges to the jury. This motion being denied, an appeal was taken to the Supreme Court of Missouri, which in March, 1852, reversed the judgment of the lower court and made Dred Scott a slave again. The appellate court ruled that although Scott may have become free when he was taken by his master into free territory he had resumed his former

status as a slave upon his voluntary return to Missouri.

About two years before this decision was rendered, Mrs. Emerson had remarried, her new husband being Dr. Calvin C. Chaffee, a physician and Congressman from Springfield, Mass. As he was an Abolitionist, Mrs. Chaffee transferred the legal title to the Scott family as slaves to John F. A. Sanford, her co-executor, who was a resident of New York State. Dred Scott's lawyers found in this circumstance an opportunity to reopen the case in the Federal courts as an issue between citizens of different states, with the possibility of carrying it on appeal to the Supreme Court of the United States.

On November 2, 1853, a new action was commenced in the U. S. Circuit Court at St. Louis, this time by Dred Scott and his wife and two daughters against Mr. Sanford. The complaint alleged assault by the defendant upon the plaintiffs and demanded \$9,000 damages. After the joinder of issue the attorneys filed with the court an agreed statement of facts, with the privilege of offering further proof on the trial for either party.

This third trial was had on June 17, 1854. The agreed statement of facts was read to the jury and no further evidence was submitted on either side. Attorneys for each party then requested a directed ver-

dict. The court charged the jury that upon the facts in the case the law was with the defendant. The jury returned their verdict accordingly and the court gave judgment for the defendant, with costs.

An appeal was then taken to the U. S. Supreme Court, and the eyes of the nation began to be focussed on the case. Some of the most prominent lawyers in the pro-slavery and Abolitionist ranks were retained to argue the appeal. They were George T. Curtis of Boston and Montgomery Blair of Washington for the appellants; Henry S. Geyer and Reverdy Johnson of Maryland for the appellee. The appeal was first argued on February 11, 1856. On May 12 the court announced that on certain technical grounds there must be a reargument of the case, which was set down for the December term. It is quite possible that there was some political strategy in this move, for this was the year of the presidential election, and the managers of Buchanan's campaign may have had good reasons for wishing to defer the decision of this case until after the election.

The reargument was held on December 15 and 16, and still the court delayed in rendering its decision. James Buchanan was inaugurated on March 4, 1857, and in his inaugural address he made the statement that the issue of slavery was a judicial question which legitimately belonged to the Supreme Court of the

United States, by which it would be speedily and finally settled. Two days afterwards the court handed down its long-awaited decision, affirming the judgment of the lower court. It was held that the Circuit Court had erred, however, in entertaining the suit at all, because Scott was not a citizen and therefore had no standing in the courts; moreover, that Congress had no power to make citizens of negro slaves or their descendants in any of the states. Although not all of the judges were in agreement on every point involved, a majority of them united in ruling (1) that Scott was still a slave, notwithstanding his temporary residence in Illinois and Wisconsin; (2) that the attempted restriction against slavery in the Missouri prohibition of 1820 was unconstitutional and void; and (3) that under the Constitution of the United States slaves were the property of their masters the same as domestic animals.

The announcement of this decision aroused intense feeling in the North and gave fresh impetus to the agitation against slavery which culminated in the Civil War. Dred Scott and his family were subsequently freed under the laws of Missouri. Scott himself died of consumption in September, 1858. Although even the location of his grave is not known, his name will always be memorable as the popular title of this famous decision.

## JOHN BROWN

(1859)

It is related of John Brown the Abolitionist that when during his boyhood he saw his little black playmate starved and beaten he swore eternal war upon slavery. In his early manhood, while living at Richmond, Pa., his barn was a station on the famous underground railroad for the escape of fugitive slaves. His plans for the widespread liberation of slaves by means of a servile insurrection seem first to have taken definite shape in 1855, when Brown was fifty-five years old. In August of that year he set out in a wagon filled with guns and ammunition to join his son John Brown, Jr., at Osawotamie in the conflict which was then going on in Kansas between the pro-slavery and the abolitionist factions. On the night of May 24, 1856, Brown and a party of six followers, four of whom were his sons, fell upon five prominent slaveholders who had been singled out as victims of a bloody reprisal and hacked them to pieces with their sabers. In revenge for this massacre the town of Osawotamie, which Brown had made the headquarters of his operations, was sacked and burned and Brown and his followers were dispersed.

For the next year or so Brown devoted his energies to enlisting the financial support of abolitionists in



Massachusetts and elsewhere in the North. Upon his return to Kansas in 1857 he began to recruit a body of men for the purpose of establishing a refuge in the mountains of Maryland and Virginia for fugitive slaves. At a convention held in Canada the following spring, plans were formulated for the establishment of a free negro state. A provisional constitution was adopted and John Brown was elected commander-in-chief of the enterprise. A few months later Brown and his guerrilla band raided some plantations in Missouri, killed one planter and liberated eleven slaves who were then transported safely to Canada. Rewards for Brown's capture were now offered by the president of the United States and the governor of Missouri, but although Brown continued his public solicitation of support in abolitionist communities, no one attempted to arrest him.

In the summer of 1859 Brown rented a farm about five miles from Harpers Ferry, Va., to be used as the base of his operations. On the night of October 16, with a band of only twenty-one men he moved upon the town, seized the United States armory and the bridges leading to the Ferry, made a number of prisoners and augmented his forces with a few slaves who little realized that they were enlisting in a treasonable enterprise. The news of the raid was quickly spread through the countryside, and by noon some companies of local militia had arrived from Charlestown

and surrounded the armory in which Brown and his men were stationed. During the night Col. Robert E. Lee appeared on the scene with a detachment of United States marines. The next morning Brown was given an opportunity to surrender, and upon his refusal the marines carried the building by assault and made Brown a prisoner. Ten of his men were killed in the fight, and Brown himself was painfully wounded. He was taken to Charlestown and lodged in prison, and a week later he was indicted by a Virginia grand jury for treason to the Commonwealth and conspiring with slaves to commit treason and murder.

The trial was held in Charlestown beginning October 25th. The prisoner was still suffering from his wounds and leaned for support on the guards who brought him into the court room. When asked by the court whether he was provided with counsel or wished to have counsel assigned, he replied: "I did not ask for quarter at the time I was taken; I did not ask to have my life spared. If you seek my blood, you can have it at any moment, without this mockery of a trial. I have no counsel. There are mitigating circumstances that I would urge, if a fair trial is to be had, but if we are to be forced with a mere form, a trial for execution, you might spare yourselves that trouble. I am ready for my fate."

The court then assigned two local attorneys, Lawson Botts and Charles J. Faulkner, to defend the accused, and proceedings were adjourned to the following day. A cot had been provided in the court room on which the prisoner was permitted to recline because of his enfeebled condition. Brown requested a further postponement of his trial on account of his weakness, but this was denied by the court. The rest of the second day was spent in the selection of a jury. The next morning Mr. Botts made a further request for adjournment on the ground that he had just received information by telegraph that there was insanity in Brown's family and that he might wish, after investigating this report, to interpose the defence of insanity on behalf of his client. When Brown heard this he immediately rose to protest against such a move, which had been planned without his knowledge or approval. "I look upon it," he said to the court, "as a miserable artifice and pretext of those who ought to take a different course in regard to me, and I view it with contempt more than otherwise."

The motion was then argued between opposing counsel, and the court finally decided that in the absence of sworn statements to support the defence of insanity the trial must proceed.

After the opening addresses on both sides, the prosecution introduced its eye-witnesses to the raid

and supplemented this testimony with a copy of the constitution and ordinances which Brown and his followers had adopted at the convention in Canada. Against this evidence the lawyers for the defence had nothing to offer except the testimony of some slaveholding citizens whom Brown had captured in the raid, to the effect that Brown had treated them with kindness and had endeavored to prevent the shedding of blood. The taking of testimony was concluded on November 1 and in the early afternoon the case went to the jury, which after brief deliberation returned a verdict of guilty. The next day the prisoner was arraigned for sentence. In response to the usual question by the court, whether he had anything to say why sentence should not be pronounced against him, Brown made this final statement: "I deny everything but what I have all along admitted—the design on my part to free the slaves. If it is necessary that I forfeit my life for the furtherance of the ends of justice, and mingle my blood with the blood of millions in this country whose rights are disregarded by wicked, cruel and unjust enactments, I submit. I feel entirely satisfied with the treatment I have received on my trial. **But** I feel no consciousness of guilt."

The sentence of the court was then pronounced, which was that the prisoner should be hanged on December 2d following.

EX PARTE MILLIGAN

(1865-1866)

The decision of the United States Supreme Court in this proceeding is justly regarded as something of a landmark in American legal history. Every American citizen should have some acquaintance with it, because it definitely established in what circumstances and to what extent the privilege of the writ of habeas corpus could be denied to any one. The writ of habeas corpus is the process by which a court inquires into the legality of any person's detention in prison or elsewhere.

Article I of the United States Constitution, in Section 9, provides that "the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." The Constitution does not specify, however, where the authority for the suspension of the writ lies, or the manner in which it may be exercised. In the early stages of the Civil War, when a great many arbitrary arrests were made in the border states for military reasons, the construction of this clause in the Constitution gave rise to considerable controversy. On May 26, 1861, Roger Brooke Taney, Chief Justice of the United States, then sitting in Baltimore, issued a writ of habeas corpus upon the petition of one

John Merryman, a private citizen of Baltimore, who was held prisoner in Fort McHenry. When the writ was served on General Cadwalader, the officer in charge, he refused to obey it, explaining that he was duly authorized by the President of the United States, in such cases, to suspend the writ of habeas corpus for the public safety. Justice Taney issued a body attachment against the General, but the United States marshal who attempted to serve it was not permitted to enter the fort. Taney then delivered an opinion in which he stated that he had exercised all the power which the Constitution and the laws conferred upon him, but that it had been resisted by a force too strong for him to overcome. He went on record, however, with the assertion that the writ of habeas corpus could not be suspended except by act of Congress.

In March, 1863, Congress passed an act which provided that "during the present rebellion, the President of the United States, whenever in his judgment the public safety may require it, is authorized to suspend the privilege of the writ of habeas corpus in any case throughout the United States or any part thereof." The Act further provided that in any case where a person had been imprisoned for a period of twenty days, and within that time a grand jury should have met and terminated its session without finding an indictment against him, he should be entitled to a discharge upon his verified petition of the facts.

Lambdin P. Milligan was a prominent lawyer of Huntington, Indiana and one of the leading spirits in the Sons of Liberty, a secret order of Confederate sympathizers in the Northwest. On October 5, 1864, Milligan and several other members of the organization were arrested by order of General Alvin P. Hovey, in command of the military district of Indiana, on various charges of conspiracy against the United States government. They were tried by a military commission in Indianapolis, which found them guilty and sentenced them to death. The record was transmitted to President Lincoln for approval, but he returned it, early in 1865, for the correction of certain irregularities. By the time the record reached Washington again in its corrected form Lee had surrendered at Appomattox, Lincoln had been assassinated and Andrew Johnson was President of the United States. President Johnson approved the findings of the military commission and ordered General Hovey to place the prisoners in irons and increase the guard over them to prevent their escape. On May 9 General Hovey issued an order for the execution of the prisoners by hanging on May 19.

Milligan, who felt that the proceedings against him were entirely illegal and that the military commission had no jurisdiction to try him, filed a petition in the Circuit Court in Indianapolis on May 10 for a writ of habeas corpus. He stated in his petition that he was a

citizen of the United States and for twenty years a resident of Indiana; that he had never been in the military or naval service of the United States. After recounting the facts of his arrest, imprisonment and trial he stated that on January 2, 1865, the United States Circuit Court had met in Indianapolis and impanelled a grand jury which had been discharged on January 27 without having found any indictment or presentment against him. He therefore prayed that he be brought before the court and either discharged from custody or turned over to the proper civil tribunal for trial according to law.

Although the facts recited in Milligan's petition seemed to bring his case squarely within the Act of March 3, 1863, the judges of the Circuit Court, who heard arguments on the petition on May 11, were divided in their opinions. They accordingly passed the responsibility for a decision up to the United States Supreme Court by certifying the three following questions to be decided from the record: (1) Ought a writ of habeas corpus to be issued? (2) Ought the petitioner to be discharged from custody? (3) Had the military commission jurisdiction to try and to sentence Milligan?

In the meantime President Johnson granted a reprieve to June 1, and on May 30 he issued an order commuting Milligan's sentence to life imprisonment. Three days later the prisoner was transferred to the



penitentiary at Columbus, Ohio, to serve his life term there.

To argue the case before the United States Supreme Court the government retained Benjamin F. Butler and Henry Stanberry, while Milligan was represented by Jeremiah S. Black and James A. Garfield. The arguments were heard from the 5th to the 13th of March, 1866. In the argument for the United States it was brought out that on September 24, 1862, President Lincoln had issued a proclamation declaring that during the existing insurrection all persons guilty of any disloyal practice, affording aid and comfort to rebels, should be subject to martial law and liable to trial and punishment by courts martial or military commission; and that the writ of habeas corpus was suspended in respect to all persons arrested and imprisoned by any military authority.

Garfield for the petitioner went exhaustively into the history and operation of martial law, from which he drew the following conclusions: (1) That the Executive has no authority to suspend the writ of habeas corpus or to declare or administer martial law, but that these functions belong exclusively to the supreme legislative authority of the nation; (2) That no necessity can be pleaded to justify the trial of a civilian by a military tribunal when the legally authorized civil courts are open and unobstructed.

The decision of the Supreme Court, announced on April 3, 1866, was that on the facts stated in the petition and the exhibits a writ of habeas corpus should be issued as prayed for; that the petitioner ought to be discharged and that the military commission had no jurisdiction to try him. It was pointed out, in the opinion of the court, that Indiana was at no time during the Civil War within the area of actual warfare. "Martial rule," the court said, "can never exist where the courts are open and in the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war."

As soon as Milligan, in the penitentiary at Columbus, learned of the decision he sent for a notary and prepared a petition for a writ of habeas corpus which was filed on April 9. The next day the writ was granted and served on the warden of the prison. That same day Secretary of War Stanton dispatched a telegram to the warden directing him to release Milligan by order of the President. The telegram was received at about 4 P. M., but Milligan had already been released on the writ at 3 P. M. and discharged from custody.

Milligan received a great ovation on his return to Indiana, but he was subsequently arrested on the same charges under an indictment which had been returned against him in June, 1865. He was released on bail and the indictment was quashed in January, 1867.

ANDREW JOHNSON  
(1868)

The impeachment of President Andrew Johnson in 1868 was the culmination of discordant relations between the President and Congress, growing out of the problems of the Reconstruction Period, which had existed for many months. The President was in favor of a liberal policy toward the Southern States, and wished to give them immediate representation in Congress. In this policy he was directly opposed by the Republican majority in Congress, which refused to admit the senators and representatives from the rebel states. With a view to further curtailment of the President's power, Congress passed over the President's veto on March 2, 1867, the Tenure-of-office act, which prohibited the President from removing from office without the concurrence of the Senate any officer appointed with the consent of that body.

As Commander-in-chief of the United States army, the President had also clashed frequently with Edwin M. Stanton, Secretary of War, who was openly hostile to the President and in league with his enemies. It was his friction with Stanton that precipitated the impeachment proceedings.

In the summer of 1867 Mrs. Mary E. Suratt had been tried by a military commission for conspiracy

to assassinate President Lincoln and had been found guilty. The record of the trial was transmitted to the President with a warrant for her execution, but accompanied also with a petition signed by five members of the commission recommending a commutation of the death sentence to life imprisonment. Johnson never saw this petition until after the execution of Mrs. Suratt. When disparaging comment on his action afterwards came to his ears, President Johnson sent for the record and found that the papers had been so arranged, apparently by design, that the petition would naturally be overlooked. David M. Miller, in his book "The Impeachment and Trial of Andrew Johnson," advances the theory that the Secretary of War was directly responsible for this deception, and that this was the last straw in the strained relations between the President and his war minister which led to the latter's dismissal. At any rate it was on August 5, the same day that the President made this discovery, that he sent the following message to Stanton:

"SIR: Public considerations of a high character constrain me to say that your resignation as Secretary of War will be accepted."

Stanton wrote in reply that public considerations of a high character constrained him not to resign his office before the next meeting of Congress. A week later the President issued an order suspending Stanton from office and appointing Ulysses M. Grant Sec-

retary of War ad interim. Under the Tenure-of-office act the suspension of any public officer was subject to the approval of the Senate, and if the Senate refused to concur in the suspension the suspended officer was automatically restored to office. It was not until January 10, 1868, that the Senate took up the matter of Stanton's suspension. When the final vote was taken three days later it was in favor of non-concurrence. The following day, January 14, Grant relinquished his temporary office to Stanton, who resumed possession of his old quarters.

The President had been led to believe that after his reinstatement by the Senate, Stanton would voluntarily resign, but in this expectation he was disappointed. He finally resolved to remove him summarily from office, in the belief that he possessed this power under the Constitution. On February 21 he prepared an order addressed to Stanton, removing him from office and directing him to deliver the records of his department to Adjutant General Lorenzo Thomas, who was authorized to discharge the duties of Secretary of War ad interim. This order was delivered to Stanton by Thomas in person, who made a formal demand upon the Secretary for the surrender of his office. Stanton refused and immediately dispatched messages to the president of the Senate and the speaker of the House, acquainting them with the President's action. The response of Congress was the

adoption of a resolution to the effect that the President had no power under the Constitution to remove the Secretary of War and designate another person to serve ad interim.

A few weeks later a resolution was adopted in the House of Representatives "That Andrew Johnson, President of the United States, be impeached of high crimes and misdemeanors." The specific crime with which the President was charged was a violation of the sixth section of the Tenure-of-office act, which provided that every removal, appointment or employment made contrary to the provisions of the act was a high misdemeanor, punishable by a fine of ten thousand dollars and imprisonment for five years. The Democrats in the House, opposing the resolution, argued that there had been no actual removal, since Stanton was still in office and discharging his duties as Secretary of War. The vote on the resolution followed strictly partisan lines, the result being 126 Republicans for the resolution and 47 Democrats against it.

On March 30, 1868, the trial of the President by the Senate began. The opening argument for impeachment was delivered by Benjamin F. Butler, who wound up a three-hour speech with the statement that the acts charged in the articles of impeachment were but the culmination of a series of wrongs, malfeasance and usurpations of which the accused was guilty.

The remainder of the day and five days following were consumed in the presentation of the evidence for impeachment, consisting of the President's orders and correspondence and the oral testimony of witnesses to the encounter between Stanton and Thomas at the War Office.

After the case for impeachment had been concluded, Benjamin R. Curtis, counsel for the President, obtained an adjournment for three days in order to prepare his testimony. When the trial was resumed, Curtis devoted the greater part of the first day to the development of his argument that Stanton was not within the Tenure-of-office act. The Secretaries, it was provided by the act, should hold their offices for and during the term of the President by whom they were appointed and one month thereafter. Stanton was an appointee of President Lincoln during the latter's first term; Lincoln's term of office had expired with his death; Stanton's tenure of office, therefore, was only thirty days longer, at the termination of which he held office only at the sufferance of President Johnson, who could remove him at his pleasure.

The principal witness for the defence was Lorenzo Thomas, who dispelled the popular impression that his encounter with Secretary Stanton in the latter's office had nearly precipitated a civil war, by relating how he and Stanton had taken a friendly drink of

whiskey together before parting. Following the testimony of Thomas there were frequent and prolonged clashes between counsel over the introduction of various lines of evidence, and it was not until April 22 that the closing addresses of counsel were begun. Then followed the most brilliant displays of oratory of the old school which the Senate chamber had ever witnessed. The managers of the impeachment occupied six days in summing up and the counsel for the President took seven. William M. Evarts alone, most prominent of the President's counsel, took three days for the delivery of his speech. His was perhaps the most forceful address of them all, and doubtless made the greatest impression on the Senate. Evarts brought out very clearly how intrinsically insignificant the charge against Johnson was, and that the whole proceeding was really a political rather than a judicial one.

On Monday, May 11, Chief Justice Chase delivered to the Senate his views upon the mode of putting the question on the several articles of impeachment. A vote was taken separately on each article, and the proceedings were adjourned from time to time, but the largest vote which the impeachment managers were able to muster at any time was 35 in favor of impeachment, against 19 opposed. As this was just one vote short of the required two-thirds, the result was an acquittal for the President.



WILLIAM SULZER  
(1913)

There are two trials famous in the history of New York State which present sharply contrasting aspects of American politics. The trial of William M. Tweed in 1873 represented a triumph of the people over a corrupt and highly organized political machine. The impeachment of Governor Sulzer forty years later was a demonstration of the same organization's restored power ruthlessly exercised under circumstances in which the people were powerless to intervene.

The impeachment of Sulzer was obviously a punitive proceeding instituted by Tammany Hall against the Governor because of his refusal to do the bidding of the Tammany Chief, Charles E. Murphy. Sulzer had never been regarded by Tammany as a strict organization man, but in recognition of his vote-getting qualities he received the Democratic nomination for Governor in 1912 when the Republicans had nominated Job E. Hedges and the Progressives had put up Oscar S. Straus for the same office. Sulzer's plurality over Hedges, who ran second, was over 200,000.

In the early months of Sulzer's administration friction began to develop between the Governor and Murphy in the matter of appointments. In the ad-

justment of their differences the Governor at first adopted a conciliatory and compromising attitude, because he realized that Murphy controlled the Legislature, whose support the Governor needed for his legislative program. By degrees, however, the demands of Murphy became more exacting and irreconcilable with the Governor's views and principles. A serious break in their relations occurred early in March, 1913, when Murphy asked the Governor to appoint James E. Gaffney to the office of highway commissioner. There was a meeting between the two men at the Shoreham Hotel in Washington at the time of President Wilson's inauguration. Murphy said to the Governor:

"I want you to appoint Gaffney. It is an organization matter. I will appreciate it."

"I want to go slow," the Governor replied, "and get the very best man I can find for that position. I would rather be slow about the appointment than be sorry."

"If you don't appoint Gaffney you will be sorry," said Murphy.

The Governor declined to make any promise about it, and Murphy warned him: "It will be Gaffney or war."

One of the measures which had been sponsored by the Governor was the direct primary bill, which was

defeated at the regular session of the Legislature before it adjourned on May 3, 1913. The Governor then issued a call for an extraordinary session of the Legislature beginning June 16, for the purpose of taking up again the direct primary bill and certain amendments to the Corrupt Practices Act. He made a number of public speeches in favor of the primary bill, and openly denounced the political bosses who were responsible for its defeat in the Legislature.

One of the acts of the Legislature at its special session was to enlarge the powers of a legislative investigation committee headed by Senator Frawley so as to authorize an investigation of the receipts and expenditures of candidates for any State office. The direct primary bill was defeated again, but instead of adjourning *sine die*, the Legislature recessed from time to time, awaiting the report of the Frawley Committee, which proceeded to delve into the campaign receipts and expenditures of the Governor.

The report of the Committee was submitted to the Legislature on the evening of August 11. The Governor was charged therein with having filed a false statement of his campaign receipts, to the effect that he had received \$5,640 from sixty-eight persons, whereas he had actually received \$12,405.93 from ninety-four contributors. Following the adoption of the Committee's report, Assemblyman Aaron J. Levy

introduced a resolution to impeach the Governor. As there were not enough votes present to insure its adoption, an adjournment was taken to August 12, and after an all-night session the impeachment resolution was adopted at five o'clock on the morning of August 13, by a vote of 79 to 45.

In the articles of impeachment the Governor was charged with the following offences: Filing a false statement of campaign contributions; falsely swearing to the truth of such statement; attempted bribery of witnesses to withhold their testimony from the Frawley Committee; attempting to suppress such testimony by deceit, fraud and threats; converting campaign contributions to his private use; corrupt use of his office in attempting to influence the vote and actions of public officers; using his authority or influence as Governor to affect the price of securities on the Stock Exchange.

The High Court of Impeachment, composed of the members of the State Senate and the judges of the Court of Appeals, convened in the Senate Chamber at Albany on September 18, 1913. The attorneys for the impeachment managers were Judge Alton B. Parker, John B. Stanchfield, Senator Edgar T. Brackett, Isidor J. Kresel, Hiram C. Todd and Henderson Peck. The Governor was represented by Judge D. Cady Herrick, Judge Irving G. Vann, Louis

Marshall, Austen G. Fox and Harvey D. Hinman. The presiding judge was Hon. Edgar M. Cullen. A committee of three was appointed to prepare rules of procedure for the court, and an adjournment was taken to the following day.

On the second day Mr. Herrick raised an objection to the presence of certain members of the Court, including Senator Robert F. Wagner, on the ground that he was personally interested in the outcome of the trial, because in case of the Governor's removal Wagner would succeed Martin H. Glynn as Lieutenant-Governor. He also objected to Senators Frawley, Ramsperger and others who as members of the Frawley Committee had been instrumental in collecting evidence against the Governor. These objections were overruled by the Court, on the ground that the personnel of the Court was fixed by the State Constitution, which contained no provision for challenging its members on any ground.

After the clerk had read the articles of impeachment, Mr. Marshall moved that the proceedings be dismissed, on the ground that the legislature, being convened in extraordinary session for the specific purposes named in the Governor's call, had no authority to consider any other matters, and therefore no right to impeach the respondent. On this motion he argued for over two hours, citing many authorities in sup-

port of his contention. Counsel for the impeachment managers replied that the rule limiting the powers of the Legislature at special sessions applied only to legislative matters. The latter view was sustained by the Court, which denied Marshall's motion. Other technical objections raised by the defence were that the acts charged were not impeachable offences, and that there could be no impeachment in any event for offences, as specified in some of the articles, which were committed before the Governor took office.

The taking of testimony began on September 24. Among the prominent witnesses was Jacob H. Schiff, who testified regarding a contribution of \$2,500 which he had made to Sulzer's campaign fund and which Sulzer had failed to include in his statement. It was shown that Thomas F. Ryan had sent his secretary to Sulzer's office with \$10,000 in cash. Henry Morgenthau had given him a check for \$1,000. Herbert H. Lehman had contributed \$5,000. None of these contributions was mentioned in Sulzer's sworn statement.

Sulzer's defence was that he had made the statement of his campaign receipts and expenditures in good faith and that he believed it to be a true and correct statement at the time he filed it. All of the other charges he answered with a general denial. His principal witness was Louis A. Sarecky, who had charge of the Governor's financial affairs during his election

campaign. Sarecky assumed full responsibility for making up the statement of receipts and expenditures, and stated that he had used campaign contributions to discharge Sulzer's personal obligations without consulting him. As bearing on the charge of converting campaign contributions to his personal use, Louis Marshall brought out on cross-examination of Mr. Schiff that it was his intent that Sulzer could use his \$2,500 contribution as he pleased, for campaign expenses or otherwise. Mr. Lehman also stated on the stand that he had given Sulzer the money unconditionally, and did not care what use he made of it.

In summing up for the defence, Marshall started out with the proposition, on the authority of Section 12 of the Code of Criminal Procedure, that impeachment could not be had for acts which did not constitute wilful and corrupt misconduct in office. This was the first time in American history, he asserted, that an attempt was made to impeach a public officer for any other cause than misconduct in office. He also pointed out conflicting or ambiguous provisions in the various statutes relating to campaign contributions, from which it might reasonably be inferred that the intent of the Legislature was to require candidates to report contributions which they themselves made, but not contributions which they received from others.

The final vote was taken on October 16. The Governor was found guilty on the following three counts: Filing a false statement of campaign contributions; perjury in swearing to its truth; attempting to suppress testimony by deceit, fraud and threats. On the question whether he should be removed from office, the vote was 43 for removal to 12 against it. The Court issued its decree in accordance with the verdict the same day.



SIR ROGER CASEMENT

(1916)

On the morning of Good Friday, April 21, 1916, His Majesty's sloop, the "Bluebell," patrolling the waters adjacent to the Irish coast, sighted a suspicious looking vessel flying the Norwegian ensign. In response to signals from the "Bluebell," the name of the foreign vessel was given as the "Aud" of Bergen, bound for Genoa. The vessel was directed to follow the "Bluebell" into harbor, which she did until she neared a lightship near Queenstown. There the ship was scuttled by the crew, consisting of nineteen German bluejackets and three officers, who raised a flag of truce and were taken aboard the "Bluebell." The ship sank almost immediately, and divers subsequently ascertained that her cargo consisted of some 20,000 rifles, mostly of Russian manufacture.

That same morning, a farmer living on the Kerry coast of Ireland near Tralee Bay, on his way home from mass, discovered a few yards from shore a collapsible boat, with four oars floating on the water nearby. In the boat he found a dagger, and loosely buried in the sand close by, a tin box containing some pistol ammunition. Subsequently there were found, also buried in the sand, three Mauser pistols, two

handbags with pistol ammunition, some maps of Ireland, a flashlight, two lifebelts and three coats. In the pocket of one coat was found a railway ticket from Berlin to Wilhelmshaven dated April 12, 1916. Footprints leading from the spot indicated that three men had walked from the shore in the direction of Ardfert. The police were notified, and in an excavation known as McKenna's Fort they found a man in hiding who gave his name as Richard Morton. He was taken to Ardfert Barracks, where he was charged with landing arms and ammunition in County Kerry. On the way he was seen to drop a paper which was found to be a code of military messages such as might be used between an invading or insurrectionary force and a foreign ally. The next day he was taken to England and handed over to the London police, to whom he then disclosed his identity as Sir Roger Casement, pensionnaire and ex-consular representative of the British government.

It was then recalled that Irish soldiers who had been captured and interned in Germany and subsequently returned to England through an exchange of prisoners, had brought back stories of Roger Casement's visit to their prison camps in Germany for the purpose of raising an Irish brigade to fight for Ireland. These reports, together with the discoveries on the Tralee shore and the sinking of the "Aud" formed the basis

of an indictment against Sir Roger, charging him with violation of the Treason Act of 1351. It was the theory of the Crown that Irish conspirators who were plotting rebellion had awaited the arrival of Casement with the German cruiser carrying arms and ammunition to aid the insurrection.

Sir Roger was placed on trial in the High Court of Justice, London, on June 26, 1916. Viscount Reading, Lord Chief Justice of England, presided at the trial. The leading counsel for the prisoner was Sergeant A. M. Sullivan, and among his assistants was Michael Francis Doyle of the American Bar. The prosecution introduced first the testimony of seven returned Irish soldiers who had been present when Sir Roger had appeared in the German prison camps and addressed the prisoners in his efforts to organize an Irish brigade. According to the accounts of these witnesses, who were fairly consistent in their direct examination, Sir Roger had represented to them that all who joined the Irish brigade would be released from prison and become the guests of the German army. He said that if Germany won a victory on the sea the Irish brigade would be landed in Ireland along with a German army and they would fight together against England there. If Germany should lose the war they would be sent by the German government to America with £5 each. Sir Roger's proposals were

not very favorably received, and in some places where he spoke the prisoners hissed him and booed him out of the camp. About fifty-two all told joined the brigade. Those who refused to join had their rations cut down.

The prosecution also introduced a printed document which, according to the testimony, had been distributed among the Irish prisoners in connection with Sir Roger's activities. It started out like this: "IRISHMEN! Here is a chance for you to fight for Ireland! You have fought for England, your country's hereditary enemy. You have fought for Belgium in England's interest, though it was no more to you than the Fiji Islands. Are you willing to fight for your own country?" It went on to say that the Irish brigade was being formed to fight solely the cause of Ireland, and under the Irish flag alone; that the brigade would be clothed, fed and equipped with arms and ammunition by the German government and would be treated as guests of the German army.

Mr. Sullivan, in a skilfully conducted cross-examination, endeavored to show that the defendant in his labors to organize the Irish brigade, told the prisoners that its purpose was not to fight against England, but to fight for the freedom of Ireland, that is, against the dominance of the Ulster Volunteers.

The second day of the trial was occupied in part with the testimony relating to the discovery of the boat and its equipment on the Tralee shore and the incident of the German cruiser. At the close of this testimony the prosecution rested its case. Mr. Sullivan then moved to quash the indictment on the ground that the defendant was charged therein with "adhering to the King's enemies elsewhere than in the King's realm," while the words of the statute were "adhering to the King's enemies within his realm, giving them aid or comfort within the realm or elsewhere." With this purely technical objection the court wrestled for the better part of two days before it was finally overruled.

The defence called no witnesses, although the prisoner, with the court's permission, made a brief speech to correct certain misstatements given in the evidence against him which he considered a reflection on his honor. Mr. Sullivan then delivered his address to the jury, in which he pointed out that the prosecution had failed to establish any connection whatever between the presence of the German cruiser in British waters and the landing of the prisoner on Irish soil. He dwelt at length on internal conditions in Ireland prior to Casement's arrest, and tried to show that the defendant's sole purpose in forming the Irish brigade was to aid the Home Rule movement in Ireland

against the aggressions of the Irish Volunteers of Ulster. Mr. Sullivan broke down completely from the strain of the trial before he could finish his address. Court was then adjourned and on the next day, June 29, his place was taken by Mr. Artemus Jones, who continued the argument where his colleague had left off.

The Lord Chief Justice in summing up to the jury paid his respects to counsel on both sides for their skilful conduct of the trial and then reviewed the evidence in a strictly judicial and impartial manner. The jury retired at 2:53 P. M. on the fourth day of the trial and returned a verdict of guilty in a little less than an hour.

Mr. Sullivan took an appeal to the Court of Criminal Appeal on the grounds that the matter described in the indictment was not an offence within the statute cited, and that the Chief Justice had incorrectly defined the offence of adhering, in his charge to the jury. The appeal was argued on July 17 and 18 and was dismissed. An application was then made to the Attorney General for his certificate authorizing further appeal to the House of Lords on the ground that the decision involved a point of law of exceptional public importance; but this application was also denied. On August 3, 1916, the prisoner was hanged in Pentonville Prison.

EUGENE VICTOR DEBS  
(1918-1919)

Eugene V. Debs, four times in succession the candidate of the Socialist Party for President of the United States, was indicted by a Federal grand jury in Cleveland, Ohio, on June 20, 1918, on the charge of having violated the Act of June 15, 1917, as amended by Act of May 16, 1918, popularly known as the Espionage Law. This law, which was enacted by Congress while the United States was at war with Germany, made it a crime to write, print or utter any language with intent to obstruct the recruiting or enlistment service or any other department of the government in the prosecution of the war. The penalty for violation of the Act was a fine of not more than \$10,000 or imprisonment for not more than twenty years, or both.

The specific utterances on which the indictment was based were contained in a public speech delivered by Debs in Canton, Ohio, on June 16, 1918, at the Ohio State Socialist Convention, and in a statement given out for publication to a reporter on the Cleveland "Plain Dealer" shortly before delivering his address.

Debs was placed on trial in Cleveland on September 9 before Judge D. C. Westenhaver in the U. S. Dis-

trict Court. The District Attorney placed on the stand Clyde R. Miller, the reporter for the "Plain Dealer" who had interviewed the defendant at Canton on June 16. The important part of his testimony was that Debs had said to him that he approved the adoption by the Socialist Party at its national convention in St. Louis on April 5, 1917, of a platform expressing opposition to the war.

The other chief witness was Virgil Steiner, a youthful shorthand reporter who had been assigned by the Department of Justice to take stenographic notes of Debs' speech. Steiner's report of the speech was read into evidence. On cross-examination Steiner confessed to a rather imperfect knowledge of shorthand, and admitted that he had been unable to record the speech verbatim. It was shown that Debs' speech, which was accurately reported by another shorthand reporter employed by the State Socialist Convention, had taken two hours in the delivery, while Steiner's version of it was read in forty minutes.

Among the damaging quotations from Debs' speech were these:

"The master class has always brought a war and the subject class has fought the battle. The master class has had all to gain and nothing to lose, and the subject class has had all to lose and nothing to gain. They have always taught you that it is your patriotic



duty to go to war and slaughter yourselves at their command. You have never had a voice in the war. The working class who make the sacrifices, who shed the blood, have never yet had a voice in declaring war. You need to know that you are fit for something better than slavery and cannon fodder."

Another offending passage in the Canton speech was his criticism of the United States government for the prosecution of Rose Pastor Stokes on a similar charge, which had resulted in her conviction and sentence to imprisonment for ten years. On this subject he was quoted as follows:

"What has she said? Nothing more than I have said here this afternoon. I want to say that if Rose Pastor Stokes is guilty, so am I. If she should be sent to the penitentiary for ten years, so should I. Rose Pastor Stokes never said a word she did not have a right to utter. Her trial in a capitalist court was very farcical. What chance had she in a corporation court with a put-up jury and a corporation tool on the bench?"

The prosecution rested its case on the third day. The lawyers for the defence introduced no witnesses, and announced to the court that Debs would plead his own case before the jury. Debs, although his education was rather deficient, possessed the gift of speech to a marked degree, and his address to the jury on this

occasion was a masterpiece of simple eloquence. It was in no sense an attempt to convince the jury that he had not done the acts charged in the indictment, or a plea to save him from the consequences thereof; it was rather an earnest effort to convince them that he had done nothing which he had no right to do under the Constitutional guarantee of free speech. Here are some of the most striking passages from his speech:

"From what you heard in the address of counsel for the prosecution, you might naturally infer that I am an advocate of force and violence. It is not true. I have never advocated violence in any form. I always believed in education, in intelligence, in enlightenment, and I have always made my appeal to the reason and the conscience of the people.

"I admit being opposed to the present form of government. I admit being opposed to the present social system. I am doing what little I can, and have been for many years, to bring about a change that shall do away with the rule of the great body of the people by a relatively small class and establish in this country an industrial social democracy.

"I believe in the Constitution of the United States. The very first amendment to the Constitution reads: 'Congress shall make no law respecting an establishment of religion or prohibiting the free exercise there-

of; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.' That is perfectly plain English. It can be understood by a child. I believe that the revolutionary fathers meant just what is here stated—that Congress shall make no law abridging the freedom of speech or the press, or of the right of the people to peaceably assemble, and to petition the government for a redress of grievances.

"That is the right that I exercised at Canton on the 16th day of last June; and for the exercise of that right, I now have to answer to this indictment. I believe in the right of free speech, in war as well as peace. It is far more dangerous to attempt to gag the people than to allow them to speak freely of what is in their hearts.

"I stand before you guilty of having made this speech. I stand before you prepared to accept the consequences of what there is embraced in that speech. I do not know, I cannot tell, what your verdict may be; nor does it matter much, so far as I am concerned. I am the smallest part of this trial. There is an infinitely greater issue that is being tried to-day in this court, though you may not be conscious of it. American institutions are on trial here before a court of American citizens. The future will tell."

After Debs had finished, the District Attorney took up the remainder of the day in his closing speech for the government. The next day the judge delivered his instructions to the jury, which retired at eleven o'clock and returned at six in the evening with a verdict of guilty. On September 14 the prisoner was arraigned for sentence and made another eloquent speech for Socialism before the court pronounced sentence of ten years' imprisonment.

His attorneys took an appeal to the Supreme Court of the United States on the ground that the Espionage Act was unconstitutional, as being in conflict with the First Amendment. Pending the determination of his appeal, Debs was at liberty under \$10,000 bail. His conviction was affirmed by the Supreme Court on March 10, 1919. Justice Oliver Wendell Holmes, who wrote the opinion, disposed of the Constitutional objection which had been raised by citing an earlier decision covering the same point, in which the Supreme Court had used this language: "We admit that in many places and in ordinary times, the defendants would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about

the substantive evils that Congress has a right to prevent."

There being no room in the Federal prison for Debs, he was sent first to the West Virginia State Penitentiary at Moundsville. After serving for two months at Moundsville, he was transferred on June 13, 1919, to the Federal prison in Atlanta. In response to the petitions of numerous friends, Debs received a commutation of sentence and was discharged from prison by order of President Harding in December, 1921. His health had become seriously impaired during his confinement in prison, but after spending a few months in a sanitarium he went on an extended speaking tour in the interest of the Socialist cause. He died on October 20, 1926.

## II. RELIGIOUS TRIALS



## SOCRATES

(399 B.C.)

Leaving out of consideration the trial and crucifixion of Jesus Christ, there is probably no finer example of tranquil courage and resignation in the face of persecution and death than that of Socrates, the first great iconoclast. For years he had been the foremost teacher and philosopher of Greece. Men were attracted by his simple and forceful utterances which set at defiance the conventionalities of his day and exposed the fallacies of current opinion. Because his teachings were regarded as inimical to the religious system of the Greeks, and as he steadfastly refused to retract his statements, he was finally summoned, in the year 399 B. C., to answer trial on the charge of impiety and corrupting the youth of the nation.

The case of Socrates came before the Heliastic Court, a judicial body consisting in the aggregate of six thousand citizens, six hundred from each of the ten tribes, who were chosen by lot. An odd number of these, ranging from 201 to 1001, constituted a local branch of this tribunal, and a majority vote of the judges was sufficient to convict the defendant in a criminal cause. The court which tried Socrates consisted of 501 judges.



The judges of this court, who were termed dicasts, were not all versed in the law, and their functions were more like those of a jury than of a judge. They simply listened to the evidence and then cast their votes according to the evidence or the prejudice of their own minds. Although the proceedings generally followed a set formula, they were subject to spontaneous interpolations from the judges, who were free to interrupt the speakers with questions or comment appropriate to the moment.

The indictment against Socrates was brought by Meletus, who is mentioned in the classics as an insignificant youth whose enmity had been incurred by Socrates' criticism of the poets. The other chief accusers were Anytus, an Athenian general who had a personal grievance against Socrates, and Lyco, who seems to have been a shiftless individual of no particular importance.

In the "Apology" and other dialogues of Plato we have a detailed first-hand narrative of the defense of Socrates and of his conduct after the trial. As to the nature of the evidence adduced by the prosecution, the record is somewhat obscure, but a little may be gathered from the answer made by Socrates in his defense. "Socrates is a criminal and a busybody, investigating the things beneath the earth and in the heavens, and making the weaker argument appear

stronger, and teaching others these same things; he corrupts the youth and does not believe in the gods the state believes in, but in other new spiritual beings;" these seem to have been the substance of the charges preferred by his accusers. "And so persuasively did they talk," said Socrates, "that I almost forgot my own identity; and yet there is hardly a word of truth in what they have said."

In the course of his address to the court, Socrates evinced less anxiety to avert his conviction than to justify his conduct. His fatalistic turn of mind and his dauntless independence served, in fact, to impair the effectiveness of his defense. In substance his answer was a general denial of the main charges, although he admitted the facts upon which they were based. "And I shall not change my conduct," he defiantly added, "even if I am to die many times over."

The vote of the judges stood at 221 for acquittal and 280 for conviction. The laws did not prescribe a penalty for the offence charged in the indictment, so this remained to be determined after conviction. The practice in such cases was for the prosecution to propose a penalty, while the accused had the privilege of naming an alternative. The court was then obliged to choose between the two penalties proposed, no compromise being permitted. Meletus demanded the penalty of death. Socrates, with characteristic irony,

suggested that in recognition of his services his meals should be served in the prytaneum at the public expense, an honor customarily conferred upon the victors in the Olympic games. Speaking seriously, however, at the promptings of his friends who were present, he proposed a fine of thirty pieces of silver; but the court assessed the penalty of death.

In an inspiring address to the court after sentence had been pronounced, Socrates showed his total unconcern at the prospect of approaching death. "This which has happened to me," he said, "is doubtless a good thing, and those of us who think death is an evil must be mistaken. For the state of death is one of two things: either it is virtually nothingness, so that the dead has no consciousness of anything, or it is, as people say, a change and migration of the soul from this to another place. And if it is unconsciousness, like a sleep in which the sleeper does not even dream, death would be a wonderful gain. For I think that if any one were to pick out that night in which he slept a dreamless sleep and, comparing with it the other nights and days of his life, were to say, after due consideration, how many days and nights of his life had passed more pleasantly than that night, I believe that any person would find that they were few in comparison with the other days and nights. But on the other hand, if death is, as it were, a change of

habitation from here to some other place, and if what we are told is true, that all the dead are there, what greater blessing could there be?"

Socrates was condemned to die by drinking poison upon the return of the ship which every year sailed to Delos to commemorate the fabled victory of Theseus over the Minotaur, by which fourteen youths and maidens of Athens were rescued from destruction. It was a law of the city that no one could be executed during the annual cruise of this vessel on its ceremonial mission. In the interval between his sentence and its execution, the friends of Socrates conspired to release him from prison and send him out of the country. Socrates, however declined to enter into their plans. So pure was his patriotism that not even to save his life would he consent to an act by which the laws of the state might be brought into discredit.

The touching scene at the enforced suicide of Socrates in prison, to which his intimate friends were admitted, is realistically described in Plato's "Phaedo." When the jailer approached with the cup of poison, Socrates said to him:

"Well, my good man, you know about these things; what must I do?"

"Nothing," he replied, "except drink the poison and walk about till your legs feel heavy; then lie down, and the poison will take effect of itself."

Socrates took the cup and very gently, without trembling or changing color or expression, but looking up at the man with wide open eyes, as was his custom, said: "I must pray to the gods that my departure hence be a fortunate one; so I offer this prayer, and may it be granted." With these words he raised the cup to his lips and very cheerfully and quietly drained it. At this, his friends could not restrain their tears, but Socrates said, "What conduct is this, you strange men! I sent the women away chiefly for this very reason, that they might not behave in this absurd way; for I have heard that it is best to die in silence. Keep quiet and be brave."

He walked about until his legs were heavy, then lay down on his back. The attendant pinched his foot hard and asked if he felt it. "No," he said; and so with his thighs, which had grown cold and rigid. When the chill had reached the region of the groin, Socrates uttered his last words, which were: "Crito, we owe a cock to Aesculapius. Pay it and do not neglect it." To a further question he made no reply, but after a little while he moved. The attendant uncovered him; his eyes were fixed.

"Such was the end," relates the chronicler, "of our friend, who was, of all those of his time whom we have known, the best and wisest and most righteous man."

## JOAN OF ARC

(1431)

The military exploits of this memorable figure in French history are so well known as to require no detailed narration here. Claiming the inspiration and guidance of the saints, she animated her dispirited countrymen and their impotent sovereign to an effective resistance against the English usurpers and their Burgundian allies. After a succession of brilliant victories over the invaders she at last fell into the hands of the Burgundians at the futile assault on Compiègne. Joan was at this time only a girl of eighteen years, yet the account of her seemingly supernatural achievements is reputed to have spread terror even to the walls of London. Immediately after her capture she was delivered to the bastard of Vendôme, who sold her to Jean of Luxenberg, otherwise known as Comte de Ligny, the general officer of the Duke of Burgundy. Pierre Couchon, Bishop of Beauvais, also laid claim to the maid because her capture had been effected in his territory. The King of England, too, was anxious to have her in his possession, and through the Bishop of Beauvais he offered a ransom of 10,000 francs for her disposal.

While negotiations for her delivery to the Bishop were in progress the maid attempted to escape by

leaping from the tower in which she was confined. She was picked up unconscious and badly hurt by the fall, but she survived and was finally turned over to the Bishop. In the meantime the King of England had conceived the plan of ridding himself of his troublesome antagonist by delivering her over to an ecclesiastical tribunal, which in those days had plenary powers for the trial and punishment of offenders against the Catholic church. The successive victories of the royal party in France had so completely demoralized the English troops that even after Joan's capture they continued to regard her with abject terror. The English finally determined that their only chance of success depended on the death of Joan, and orders were issued that the trial should proceed without delay. The prisoner was removed to the castle at Rouen, and here, on January 9, 1431, her trial was begun.

It should be stated at the outset that the trial of the maid, like most similar proceedings conducted during the inquisitorial period, was a hollow form and mockery. Joan's condemnation and death were predetermined, and the formal steps leading to her sentence were a mere sop to the laity to preserve the dignity of the ecclesiastical functions. It has been conclusively established that her judges accepted bribes to convict her. So insidious and corrupt were the

methods employed in these proceedings that even the men designated as counselors for Joan's defense were either secretly biased against her or intimidated by the presiding judges against pleading her cause too warmly. The peril of Joan's position is illustrated by an incident which occurred while she was awaiting trial. She was taken seriously ill in prison, and the doctors who were summoned to attend her were urged by the Earl of Warwick, as the representative of the English monarch, to exert their utmost skill to effect the maid's recovery; "for the King of England," said he, "would not for the world that she should die a natural death; he has paid dearly for her, and her days must end by the hand of justice. He expects to have her burnt."

The judges presiding over the trial were the Bishop of Beauvais and Jean le Maitre, inquisitor-general of the faith in France. The indictment against Joan embraced the following charges: infringement of the laws of the church, by making use of magic practices; by taking up arms, contrary to her parents' wishes; by wearing clothes which were not those of her sex; and by announcing revelations which were not sanctioned by ecclesiastical authority. Joan was first examined as to her virginity, to determine whether she was subject to Satanic influence; for it was a prevailing superstition that while the devil might not be in



league with ordinary mortals, he was powerless to have such relations with a virgin. The matrons who examined the prisoner rendered a favorable report on this point. A citizen of Rouen had in the meantime been despatched to Joan's home to procure evidence damaging to her character. He returned, however, with only high testimonials both as to Joan and her family; but this evidence was carefully suppressed by the Bishop.

The first step taken by Joan to defer her fate was to demand that as many ecclesiastics should be present on behalf of Charles VII, the French monarch, as on the part of the King of England; but this plea was promptly overruled. An oath was exacted of her, that she should declare the whole truth. Joan qualified her compliance with this by declaring that she would give no information respecting her secret communications with the king. In vain did the judges attempt to draw certain statements from her concerning the king; she persisted in her refusal and invariably bade them pass on to other matters. Far from taking to herself any credit for her victories, she attributed them all to the interposition of the Almighty. On the subject of her male apparel, Joan explained that in the first place she had received orders from Heaven to assume it, and second, that such a garb was better calculated than a woman's to secure her from

the insults of the soldiery, and that her chastity was thereby more surely preserved.

Joan was then subjected to a course of disconnected, irrelevant and confusing interrogations, directed wholly with a view to betraying her into some damaging statement which would technically justify the sentence reserved for her. To these questions Joan replied simply and truthfully, but, not always apprehending the drift of her questioners, she several times fell into the snare which had been laid for her. Once, her patience exhausted at the hectoring tone of the Bishop of Beauvais, she thus boldly addressed him:

“You say that you are my judge. I am not aware that you are such; but I charge you take heed and do not judge me wrongfully, or you will place your soul in great jeopardy; and I finally warn you that should it please the Almighty to punish you, I have only fulfilled my duty in thus giving you timely notice.”

The accusations against Joan were finally summed up in the form of twelve articles and submitted to a faculty of twenty-two doctors and licentiates. The findings of the faculty were adverse to the prisoner on every point, and concluded with the recommendation that if she did not publicly abjure her errors she was to be abandoned to the power of the secular judge. Attracted by the prospect of being taken from the hands of her English jailers and given over to men

of the church, Joan was persuaded to sign the recantation which was presented to her, and to assume woman's garb in token of her retraction. She was then condemned to do penance for her sins by imprisonment for life.

To the English this commonplace judgment was far from satisfactory, and the judges were bitterly reproached with not having earned the king's money. The attitude of the soldiery became so menacing that the priests resorted to desperate measures to compromise the maid anew. Her guards were ordered one morning to deprive her of her feminine raiment, place before her the male attire which she had discarded, and remove her to another part of the castle. Joan had no alternative but to resume the objectionable garb, and thus fell into the snare. The judges were instantly summoned to witness the change of dress, and with this trifling circumstance as their sole justification, they hastily drew up a citation by which Joan was condemned to be burned alive the next day. She was delivered over to the English executioners, who lost no time in carrying out the inhuman sentence.

JOHN THOMAS SCOPES  
(1925)

The trial of John Thomas Scopes at Dayton, Tenn., in July, 1925, was a trial in name only. In reality it was a bitter and dramatic contest between science and religion, in which the adherents of religion prevailed simply because religion is better known and more popular than science among the people of Tennessee.

It all came about because some school children had come home and told their parents that the Biblical account of creation was all nonsense, and that animal life on this earth had evolved through very long and gradual processes of development from single cells as described in their biology class at school. When this came to the ears of pious John Washington Butler, member of the State Legislature, he introduced a bill making it unlawful for any teacher in the public schools of the State to teach a theory denying the Biblical account of man's origin and to teach instead that man has descended from a lower order of animals. The bill was promptly passed by the Legislature on March 21, 1925. The word "evolution" was not mentioned in the body of the law, but the title of it was "An Act prohibiting the teaching of the evolution theory, etc." Violation was made a misdemeanor, punishable by a fine of \$100 to \$500. The Legisla-

ture had innocently overlooked the fact that the very doctrine which they sought to bar from their public schools was taught in a work on biology which was one of the official textbooks selected by the State School Book Commission for use in the public schools.

A few months after the law was passed Dr. George Rappelyea, of Dayton, who was not favorably disposed to such legislation, discussed it with his friend John Thomas Scopes, who was the teacher of science in the Rhea County High School, and whose views on the subject coincided with his own. Scopes said that he had probably violated the statute a month or so after it was enacted, in reading to his class certain passages from George W. Hunter's "Civic Biology." With Scopes' consent Dr. Rappelyea decided to make a test case of it to try out the constitutionality of the law. He swore out a complaint against Scopes, who was promptly indicted by the grand jury of Rhea County on the charge of teaching evolution in a public school.

The American Civil Liberties Union had previously announced that they would finance such a test case. Scopes made a trip to New York to confer with this body, and they selected the following counsel to conduct the defence: Clarence Darrow of Chicago, Dudley Field Malone and Arthur Garfield Hays of New York and John R. Neal of Rhea County, Tennessee.

The trial began on July 10, 1925, before Judge J. T. Raulston in the 18th Judicial Criminal Court at Dayton. Assisting the District Attorney, A. T. Stewart, for the prosecution, were William Jennings Bryan and his son, W. J. Bryan, Jr., Gen. Ben G. McKenzie and his son, County Judge J. G. McKenzie, of Dayton. The weather was extremely hot, and the court permitted the utmost freedom and informality of attire. Coats were discarded by nearly all the lawyers, witnesses and jurymen. Darrow was conspicuous in blue suspenders; Bryan was also coatless and carried a palm-leaf fan; Scopes wore a shirt without a collar, open at the neck and with sleeves rolled up.

The session opened with prayer, in accordance with Tennessee custom. The selection of the jury was completed on the first day. The twelve jurymen consisted of six Baptists, four Methodists, one member of the "Disciples of Christ" church, and only one who acknowledged no church affiliation. Proceedings were then adjourned to the following Monday, July 13.

Mr. Darrow objected to opening court with prayer, but he was overruled by the court. After the indictment had been read to the jury, Neal made a motion to quash it on the ground of insufficiency and because of discrepancies between the language of the indictment and that of the statute, and also on the ground that the statute violated the Tennessee Constitution

and the Constitution of the United States. One of the constitutional points that he raised was that the State Constitution specifically directed the Legislature to "cherish science." On motion of Mr. Stewart, the jury was excused and retired to the lawn during the argument on Neal's motion, which consumed the second and third days of the trial. Darrow made a stirring speech for the motion, which was denied by the court on the morning of the fourth day.

On Wednesday afternoon, July 15, the State presented its case very briefly, the only witnesses being Superintendent White of the Dayton public schools, two boys who had been pupils in the defendant's class, and a Dayton bookseller who testified to the sale of the biological textbook used by Scopes in his school work. On cross examination by Darrow he acknowledged that he had noticed no signs of moral deterioration in the community since he had been selling the book.

When the State had rested its case, the defence offered to place on the stand fifteen scientists of note to explain the doctrine of evolution, and to establish also that it did not necessarily conflict with the Bible. The prosecution objected to the introduction of any such line of evidence, and again the jury retired to the lawn while the court heard arguments on the admissibility of such testimony. William Jennings Bry-

an delivered his one formal speech of the trial in the course of this argument. He did not confine himself strictly to the question at issue, but delivered an eloquent plea for revealed religion as taught in the Bible, eliciting prolonged applause from the spectators in court. On Friday, July 17, Judge Raulston announced his ruling that scientific testimony would be excluded. Mr. Hays with some heat took an exception to the ruling of the court, and requested leave to put into the record, for the purpose of appeal, the substance of the testimony which the scientific witnesses were prepared to give. To this request the court responded by giving the defence the privilege of preparing statements embodying the proffered testimony of the scientists. An adjournment was then taken to Monday, July 20.<sup>1</sup>

The trial had now lasted a week, and feelings had run high during that period of torrid heat and nervous tension. Sharp verbal clashes between counsel had been frequent. On one occasion Mr. Stewart asked Mr. Hays to keep his mouth shut. Mr. Hays, when asked by McKenzie whether he believed the story of Divine creation, replied, "That is none of your business." During the argument on the admission of scientific testimony, Darrow protested against the court's seeming partiality toward the prosecution. Judge Raulston remarked: "I hope you do not



mean to reflect on the court?" To which Darrow retorted, "Well, your Honor has the right to hope."

When court reconvened on Monday, Darrow was cited for contempt of court on account of this remark, but the matter was smoothed over by an apology from Darrow, which the court graciously accepted, after delivering a brief sermon to Darrow. The two shook hands, and proceedings were resumed with the reading into the record of the statements prepared by the scientists, conveying their conception of the theory of evolution and a discussion as to its consonance with religious beliefs. They were all agreed that the cause of education would be seriously impaired by the exclusion of the evolutionary theory from the public school curriculum. In the afternoon, because of the increasing attendance of the public, court adjourned to the lawn. Mr. Darrow sprang a surprise by calling Bryan as a witness. Mr. Stewart objected vigorously, but as Bryan was willing to be questioned the court permitted Darrow to proceed. What followed was the outstanding feature of the trial. The defence could not have expected to accomplish anything helpful to the defendant by the examination of Bryan, but as a melodramatic incident of the trial it was welcomed and keenly relished by everyone who followed the proceedings. Here was a combat between the two colossal figures who dominated the arena of the trial

—Bryan, thrice defeated candidate of the Democratic party for President of the United States and now the self-constituted defender-in-chief of orthodox Christianity, and Darrow, the great champion of human liberties and freedom of thought; the one renowned for eloquence of speech, the other for his unusual abilities as a trial lawyer.

Which of the two had the better of that two-hour tilt depends somewhat on the point of view. The Tennesseans, of course, were with Bryan, and doubtless in their opinion Bryan carried off all the honors. Certainly he showed that he possessed greater gifts as a theologian than he had ever displayed as a statesman. But there can be no doubt that he went through a severe ordeal. Whatever defects might be ascribed to Bryan's religious beliefs on the score of ignorance, shallowness or bigotry, were mercilessly exposed by Darrow. The examination finally developed into a violent religious argument between the two men and was abruptly adjourned by the court when a physical encounter between them seemed imminent.

When the court convened the next morning, July 21, the last day of the trial, Judge Raulston ordered the testimony of Mr. Bryan on the examination of the preceding day to be expunged from the record on the ground that it had no bearing on the issues presented. Darrow made a brief address to the jury, in which

he intimated that he expected them to bring in a verdict of guilty and that he would find no fault with that, because the defence was prepared to take the case up to the Supreme Court on appeal. Nobody was either surprised or disappointed when the jury came in with a verdict of guilty. The Judge imposed a fine of \$100, the minimum penalty under the statute.

An appeal was taken on assignments of error, principally because of the court's refusal to quash the indictment on the constitutional grounds advanced at the trial. The Tennessee Supreme Court, in an opinion filed January 17, 1926 (154 Tenn. 105), overruled all of the objections raised by appellant as to the constitutionality of the law, but reversed the judgment of the trial court on a technical point which everyone else had apparently overlooked. The Tennessee Constitution provides that a fine exceeding \$50 must be assessed by the jury. As the fine in this case had been assessed by the judge, the conviction was reversed. One of the four judges dissented from the majority opinion on the question of constitutionality, holding that the law was invalid for uncertainty of meaning.

### III. MILITARY TRIALS



MAJOR JOHN ANDRE  
(1780)

There was probably no military career of the Revolutionary period more brilliant than that of Benedict Arnold up to the time of the Battle of Saratoga, in which he fell with a shattered thigh after leading a charge against the enemy with his characteristic fury and impetuosity. His promotion to the rank of Major general in the Continental army had been won on the sheer merit of his soldierly qualities, and in spite of many enemies which he had made by reason of his independent spirit and fiery nature. Following his exploit at Saratoga he had been presented by General Washington with a pair of fine pistols and placed in command of the American forces in Philadelphia. While he was stationed there various charges of personal and official misconduct were preferred against him by President Reed of the executive council of Philadelphia. They were dealt with first by Congress, then by a court martial, which recommended that Arnold be reprimanded by General Washington. The Commander-in-chief, who entertained the warmest friendship and regard for Arnold, discharged his duty as gently as possible, urging Arnold to "exhibit anew those noble qualities which have placed you in the list of our most valued commanders."

A short time after Washington had administered the reprimand to Arnold he placed him in command of the fortress at West Point, at Arnold's request. Arnold's secret purpose was to betray the Revolutionary cause and surrender the fortifications to the British. He had previously written a letter to Col. Robinson of the British army, acquainting him with his designs and offering his services to the king.

Major John Andre, a young adjutant general of the British army and aide-de-camp of Sir Henry Clinton, was assigned to conduct the negotiations with Arnold. After a brief period of correspondence between the two under the assumed names of Adolphus and Anderson, arrangements were made for a meeting in the house of a Mr. Smith, just outside the American lines. Major Andre came up the river from New York and went aboard the British sloop of war "Vulture" which was anchored in the Hudson near Stony Point. On the night of September 21, 1780, Major Andre, traveling under a pass from General Arnold in the name of John Anderson, was brought ashore and conducted to the place of meeting, where final arrangements were completed to admit the enemy to West Point by way of an unguarded pass. The conspirators spent the entire night in the discussion of their plans, and when dawn arrived, Major Andre remained in concealment until the fol-

lowing night. When he attempted to return to his vessel, however, the boatman who had brought him ashore refused to row him back, his suspicions having been aroused by the fact that the vessel had been fired upon from shore and had then dropped farther down the river. This circumstance obliged Andre to attempt his return to New York by land. He donned a plain suit of clothes and started on his journey by horse, bearing a pass from General Arnold authorizing him to proceed to White Plains or beyond, if necessary. Thus equipped he passed through all of the American lines and outposts until he reached Tarrytown, when a militiaman who was one of a scouting party of three suddenly sprang from a covert and seized the reins of his horse. This man happened to be wearing the overcoat of a British soldier, and Andre was deceived by this into the belief that he belonged to the British forces. He told the man that he was a British officer on urgent business and should not be detained.

The two other militiamen come up at this point, clad in the Continental uniforms. Andre then realized his error and offered them a purse of gold and a valuable watch if they would let him pass. His captors turned a deaf ear to his proposals and proceeded to search him instead. They found on his person papers in Arnold's handwriting, giving a description of the



fortifications at West Point and other information connected with its projected surrender. Andre was then taken before Lieutenant-colonel Jameson, the American commanding officer, for examination. At first he maintained the character which he had assumed under the name of Anderson and that he was in the service of General Arnold. At his request Jameson dispatched a message to Arnold that Anderson had been taken. After allowing sufficient time for Arnold to make his escape, however, Andre revealed his identity as the adjutant-general of the British army.

After suitable precautions had been taken for the security of West Point, a board of special officers was appointed to take evidence and report on the case of Major Andre. Among the members of this board, which was presided over by Major-general Greene, were Generals Lafayette and Steuben.

When this board convened for the trial, Major Andre was informed that he was not bound to answer any questions which might embarrass him. Notwithstanding this admonition, Andre frankly confessed to the entire plot so far as the facts were within his knowledge. The board accordingly had no alternative but to report their findings and recommend that Andre be hanged as a spy. Sentence to this effect was pronounced the next day.

Andre was keenly sensitive of his honor as a soldier, and he protested against the mode of execution by hanging which had been prescribed. He wrote a letter to General Washington asking for a mitigation of the sentence so that he might be shot as a soldier instead. Washington, however, denied his request on the ground that the occasion demanded the enforcement of the sentence as an example to others. After the sentence had been carried out, General Washington wrote in a private letter: "Andre has met his fate with that fortitude which was to be expected from an accomplished man and a gallant officer ; but I am mistaken if, at this time, Arnold is not undergoing the torments of a mental hell."

## THE LINCOLN CONSPIRATORS (1865)

Shortly after the assassination of President Lincoln on the night of April 14, 1865, evidence was obtained of a carefully laid plot to assassinate the President, the Vice President, Secretary of State William H. Seward and General Ulysses S. Grant. John Wilkes Booth, the assassin and arch conspirator, was shot and mortally wounded while resisting capture in a barn on Garrett's farm in Virginia, and before the end of the month eight of his fellow-conspirators had been arrested.

On May 6, 1865, President Andrew Johnson appointed a military commission to try the conspirators. The commission was composed of Major-General David Hunter, presiding, Major-General Lew Wallace and seven other officers of high rank.

The prisoners were David E. Herold, George A. Atzerodt, Lewis Payne, Michael O'Laughlin, Edward Spangler, Samuel Arnold, Mary E. Surratt and Samuel A. Mudd. They were arraigned before the commission on May 10, and each of them entered a plea of not guilty.

The case for the government was conducted by Brigadier-General Joseph Holt, Judge Advocate Gen-

eral. The evidence first presented was designed to establish the existence of a general conspiracy among Confederate sympathizers to murder or kidnap the President and other high officials, to burn steamboats, warehouses and hospitals in the Western states, to spread yellow fever and smallpox infection in the North, to burn some of the large Eastern cities and to poison the water supply of New York City. This was followed by testimony relating to the assassination of Lincoln and the pursuit of the assassin.

Testimony was next offered to connect the prisoners individually with the conspiracy, beginning with David E. Herold, who was in the Garrett barn with Booth when the two were overtaken by cavalrymen of the United States army. Herold was a young drug clerk in Washington who was shown to have associated for some time on intimate terms with Booth. He had hired a horse on the day of the assassination and had fled from the city close on the heels of Booth that night. Herold was ably defended by Frederick Stone, who questioned the jurisdiction of the commission and attacked both the indictment and the proof as insufficient. The only witnesses for the defence were some of his neighbors who attempted to set up an alibi in connection with an alleged rendezvous with Booth in Canada in February of that year, and who testified to his shiftless and unreliable habits, to nega-

tive the charge of participation in so important a conspiracy.

The evidence against George A. Atzerodt showed that the part which had been assigned to him by Booth in the conspiracy was to assassinate Vice President Johnson. Atzerodt admitted this himself, but asserted in his defence that he had refused to carry out his part in the plot, and that he had so informed Booth some time before the 14th of April. It was shown, however, that he had registered at the Kirkwood House, where the Vice President was staying, on the morning of April 14; that he had made inquiries as to the location of Johnson's room, and that a loaded revolver had been found under a pillow in his bedroom. Atzerodt also admitted that he had thrown away his bowie knife on the streets in Washington on the night of the assassination. His lawyer attempted to show by witnesses and in his argument that Atzerodt was such a notorious coward that even if he had been assigned by Booth to kill the Vice President he never would have had the courage to attempt it.

Lewis Payne was the man who had entered the home of William H. Seward, Secretary of State, on the same night that Lincoln was shot and made a murderous assault upon the Secretary as he lay on a sick bed. The prisoner made a complete confession of his guilt. His attorney first attempted to interpose the

defence of insanity, but when this failed he made an eloquent plea for the prisoner on the ground that he believed his act to be justifiable, and that this should be considered in mitigation of his punishment.

The charges against Mrs. Surratt were that she was a member of the general conspiracy and that as mistress of a boarding house in Washington she had harbored the conspirators and permitted them to use her house as their headquarters. The principal witness against her was Louis J. Weichmann, a classmate of her son, John H. Surratt, in preparatory college. Weichmann had been a boarder in the Surratt house and for six months had observed the meetings of the conspirators there. Mrs. Surratt's defence was that she had always been loyal to the government and that if her home had been used as the headquarters of the conspiracy it had been without her knowledge.

Michael O'Laughlin had been a schoolmate of John Wilkes Booth and for several months prior to the assassination the two had met frequently at the National Hotel in Washington and elsewhere. The case against him was not very strong, but the contention of the government was that he had planned to murder General Grant and Secretary of War Edwin M. Stanton. The principal evidence against him was that he had visited the offices of the War Department on

the night of April 13 and inquired for the Secretary of War, but without either speaking to him or stating his business.

Samuel Arnold was charged with being a party to the general conspiracy against the President. It was shown that he was for a time interested in a plot to kidnap the President, but he had a falling-out with Booth in February, 1865, when he declared that he would have nothing further to do with the conspiracy. Walter S. Cox acted as counsel for both O'Laughlin and Arnold, and in a very able address to the commission attacked the evidence adduced against them as circumstantial and wholly insufficient for a conviction.

Edward Spangler was accused of aiding John Wilkes Booth in his preparations for the murder and in his subsequent escape. He was a stage hand at Ford's Theater, and it was alleged that he had prepared the bar which had been placed against the door of the Presidential box to prevent any interference from the audience. He held Booth's horse while Booth was in the theater and helped him to escape after the crime. His counsel endeavored to show that although he may have been Booth's instrument in the commission of the crime he was ignorant of Booth's purpose.

Samuel A. Mudd was the physician at whose house Booth and Herold had stopped in the course of their

flight on April 15, and who had set Booth's fractured leg, sustained in his leap from the President's box to the stage. He was accused of membership in the conspiracy, but the only thing that was brought out against him, apart from Booth's visit to his house, was that he had met Booth frequently in Washington.

The commission met in secret session on June 28 and 29 and deliberated on the evidence. They found all of the defendants guilty. Herold, Atzerodt, Payne and Mrs. Surratt were sentenced to death and were hanged on July 7. O'Laughlin, Arnold and Mudd were sentenced to life imprisonment and Spangler to six years.



ALFRED DREYFUS  
(1894–1906)

What monstrous injustice is sometimes perpetrated by a tribunal of justice is tragically exemplified in the case of Alfred Dreyfus, a captain of artillery attached to the General Staff of the French army, who suffered extreme forms of degradation and penal servitude for a crime which he never committed. The conditions which were chiefly responsible for the miscarriage of justice in Dreyfus's case were, first, the intense feeling of anti-Semitism, and second, the attitude of tenseness and apprehension toward Germany which existed in the minds of the French people at the time.

Germany and Italy had her spies in France, and France had her own system of counter-espionage to check the operations of the foreign spies within her borders. In September, 1894, a female servant of the German embassy in Paris, who had been suborned by the French government to search the waste baskets and fireplaces of the Embassy for scraps of paper which might contain military or state secrets, delivered to the General Staff the torn fragments of a *bordereau* or memorandum which, when pieced together, was found to read as follows:

"Although I am without news that you wish to see me, I send to you nevertheless some interesting items:

1. A note upon the hydraulic brake of the 120 and the way in which this gun behaved.

2. A note upon the covering troops (some modifications will be introduced by the new plan).

3. A note upon a modification in artillery formations.

4. A note concerning Madagascar.

5. A provisional copy of the firing manual for field artillery (14th March, 1894).

This last document is extremely difficult to procure and I can have it at my disposal for a few days only. The Ministry of War has sent out a fixed number to the various corps, and the corps are responsible for them. Every officer provided with a copy has to return it after the manoeuvres. If you wish to take out of it whatever interests you and hold it afterwards at my disposal I shall make the extracts, unless indeed you would like me to have it copied in extenso and then send the copy to you.

I am just off to the manoeuvres."

From the reading of this memorandum the conclusion was at once reached that it was the work of an artillery officer of the General Staff. The handwriting of several such officers was produced for comparison with it, and it seemed that the handwriting of

Dreyfus resembled it very closely. Dreyfus was an Alsatian Jew—the only Jew on the General Staff—and there was some prejudice against him on that account, although he was generally acknowledged to be an officer of zeal and ability who had won his promotion strictly on his merits.

On October 12, 1894, Dreyfus received orders to report at the War Office in civilian attire on October 15. When he appeared that day he was taken to the private office of the Chief of the General Staff and received by Commandant Du Paty de Clam, who requested him, while he was waiting for the General, to write a letter for him, as he had a sore finger. He then dictated a letter, incorporating some passages taken from the *bordereau*. When Dreyfus had finished writing, Du Paty proclaimed in a loud voice that he was under arrest on the charge of high treason. He was then, without further explanation or opportunity to communicate with his family or friends, hurried off to the military prison and placed in solitary confinement. Not until fifteen days later was he acquainted with the exact charge against him and shown a photographic copy of the *bordereau*, of which he indignantly disclaimed all knowledge.

In the meantime, although Dreyfus had not been formally arraigned before any tribunal, the circumstances and cause of his arrest were made public, and

the anti-Semite press was violent in its denunciation of the traitor, who was falsely represented as having made a complete confession of his guilt. Early in November the preliminary hearing was held, at which several handwriting experts were asked to give their opinion whether the *bordereau* was in the handwriting of Dreyfus. Two of them, including the expert for the Bank of France, said that it was not; but two others, including Bertillon, who was there with an elaborate system of measurements, asserted that it was. On December 4 the Military Governor of Paris signed an order for the trial of Dreyfus before a court martial.

The trial began on December 19, before a court of seven members. Dreyfus was represented by a very able lawyer, M. Demange. Over the protest of the prisoner's counsel, the President of the court ruled the proceedings would be closed to the public. By order of the Minister of War, and without the knowledge of the prisoner or his counsel, the members of the court were permitted to examine, as evidence against the prisoner, a *dossier* or file of secret documents, referring to Dreyfus. One of the witnesses against him was Major Henry, sub-chief of the Intelligence Branch of the General Staff. His testimony was entirely hearsay and without corroboration of any kind. He testified, for example, that a ranking

officer had confided to him that Dreyfus was a traitor. When pressed by the defence to name his informant, he shouted dramatically: "When an officer has a secret in his head he does not impart it, even to his cap!" The testimony of the handwriting experts continued evenly balanced for and against the prisoner. An acquittal was confidently expected, yet, such was the prejudice against him, Dreyfus was found guilty by unanimous vote of the court. He was sentenced to deportation for life, the loss of his military rank and degradation from the army.

On January 5, 1895, the ceremony of degradation took place on the parade ground of the Ecole Militaire in Paris. In the center of a hollow square of soldiers the sentence of the court martial was read to Dreyfus and at its close General Darras thus addressed the prisoner: "Alfred Dreyfus, you are unworthy to bear arms. We degrade you." Dreyfus shouted in response: "Soldiers! An innocent man is dishonored! Vive la France! Vive l'Armee!" An officer then tore from the uniform of Dreyfus the buttons, gold stripes and badges of rank. His sword was broken across the officer's knee and the pieces thrown to the ground. Two weeks later the prisoner was placed on board a vessel bound for Devil's Island, off the coast of French Guiana. Here he arrived on April 13, 1895, and was kept in solitary confinement for over

four years, on a fare of such wretched quality that several times it made him seriously ill.

His wife and brother in Paris, in the meantime, exerted themselves with tireless energy and devotion to clearing his name, as they were firmly convinced of his innocence. The Intelligence Branch of the War Office soon found that military secrets were still leaking out. In May, 1896, the same waste basket in which the famous *bordereau* had been found, yielded the fragments of a *petit bleu*, or telegram, in the handwriting of the German military attache, Col. von Schwarzkoppen, the same person to whom the famous *bordereau* had been sent. This dispatch was addressed to Commandant Esterhazy, French Battalion Commander in the 74th Infantry Regiment, stationed at Rouen. It read as follows:

Dear Sir:

Regarding the matter in question, I would first like to have fuller details. Will you please let me have them in writing? I will then decide whether I can continue my relations with the firm of R. or not.

When this document was brought to the attention of Col. Picquard, Chief of the Intelligence Section of the General Staff, it suggested to him at once the possibility that Esterhazy was the author of the *bordereau*. He compared it with some of Esterhazy's letters, and the result confirmed his suspicions. He con-

ferred with his superiors on the General Staff, but they were opposed to stirring up the Dreyfus case with this new development. They were unable to suppress it, however, and on November 15, 1897 Dreyfus's brother Mathieu filed with the War Ministry a formal accusation against Esterhazy as the author of the *bordereau*.

There was now no way out for the Army but to go through the formality of a court martial for Esterhazy. The whole proceeding was a farce, however, for Esterhazy and the members of the court were all coached in a prearranged plan for his acquittal. Esterhazy on the stand denied his guilt and told how Dreyfus had obtained a specimen of his handwriting in order to imitate it. On January 11, 1898, the court brought in a unanimous verdict of acquittal.

The trial of Esterhazy had served, nevertheless, to arouse fresh interest in the case of Dreyfus, and by degrees public sentiment began to react in his favor. Two days after Esterhazy's acquittal Emile Zola, the eminent French novelist, published his famous letter entitled "J'accuse" in which he reviewed the events of the Dreyfus and Esterhazy trials and accused the members of the General Staff of a conspiracy to deceive the public and defeat the ends of justice in shielding Esterhazy so as to cover up their blunder in convicting Dreyfus. The publication of this letter in

Georges Clemenceau's newspaper "l'Aurore" created an international sensation. Zola was shortly afterward placed on trial for criminal libel. He was found guilty and sentenced to a year's imprisonment and a fine of three thousand francs, but while an appeal was pending he took refuge in England.

For another year or so the Dreyfus affair seemed to be forgotten. It was brought to the fore again by the accidental discovery that one of the documents which had been used against Dreyfus was a forgery. This was followed shortly after by the confession of Esterhazy, who had moved to England, that he had written the *bordereau*. Dreyfus's friends renewed their efforts for a new trial, and on June 5, 1899, Dreyfus received the news that the verdict of December 22, 1894 was annulled and that his case was to be retried by court martial at Rennes. He naturally supposed that all the facts had been brought to light and that he would now be completely vindicated. The Army, however, was still in control of the situation, and was not prepared to admit that it had been in the wrong. The verdict of the second court, by a vote of five to two, was "guilty, with extenuating circumstances," and the sentence imposed was ten years' imprisonment.

Although he was granted a full pardon and released in September, 1899, Dreyfus continued his efforts to establish his innocence. In 1903 the Socialist Deputy,



Juares, made a stirring address in the Chamber demanding a new inquiry on the *bordereau*, and Dreyfus filed a petition for revision of his second trial. His petition was granted, and on July 12, 1906, the Court of Cassation proclaimed him innocent. The following day he was rehabilitated to his former station in the army on the same spot which had witnessed his degradation twelve years before.

Dreyfus resigned from the army in 1907, but enlisted again during the World War and served with distinction in the struggle against Germany.

FRANCISCO FERRER  
(1909)

Francisco Ferrer, founder of the Escuela Moderna in Barcelona, which was the first secular school to be opened in modern Spain, has been described as a philosophical Anarchist; that is to say, he accepted the academic principles of Anarchism without actively participating in the movement. He was most interested, however, in educational reforms, and he was strongly opposed to the prevailing system of education in Spain, which was entirely in the hands of the Catholic Church.

In 1901, when Ferrer was about forty years old, a wealthy old Frenchwoman left him some property worth about \$120,000, which he converted into cash to carry on his reforms in Spain. It was with these funds that he opened the Escuela Moderna in September, 1901. His purposes in establishing the school he announced as follows: "To make children reflect upon the lies of religion, of government, of patriotism, of justice, of politics and of militarism; and to prepare their minds for the social revolution."

Among Ferrer's assistants was Mateo Morral, an avowed Anarchist, who was employed as librarian of the school. On May 31, 1906, Morral threw a bomb

at the newly wedded King Alfonso and his queen as their marriage procession proceeded along the streets of Madrid. The royal couple escaped without injury, but fifteen persons were killed. Morral fled from the city, but two days later he was traced to a railway station fourteen miles away, where he shot himself to avoid capture. On June 4 Ferrer was arrested for alleged complicity in this outrage, probably for no better reason than his previous association with Morral.

Ferrer was held prisoner for a year before being tried on this charge, and in the meantime his school was closed. The evidence against him, however, was purely presumptive and hearsay, and of such a flimsy character that he was finally acquitted and released. He was not permitted to reopen his school, but in its place he set up a publishing concern and promulgated his doctrines by means of books and pamphlets circulated throughout Catalonia.

During the week beginning July 26, 1909, an insurrection broke out in Barcelona, which was initiated by a general strike and marked by numerous riots and other disorders, such as the looting of churches and the burning of several convents. The trouble seems to have been due partly to public resentment against the government for calling upon the reservists to aid in an unpopular war in Morocco and partly to an eruption of popular feeling against the religious orders

who were living at the expense of the poorer classes. Ever since Ferrer's first trial a close watch had been kept on his movements, and for this reason, upon the advice of his family and friends, he went into concealment while the Barcelona uprising was in progress, although he happened to be in the city on a visit on the first day. In spite of his precaution he was accused of leading a mob in the burning of one of the convents. On August 17 the local authorities in Barcelona published a summons commanding Ferrer to appear within twenty days and answer the charges against him.

Ferrer saw the summons, but was persuaded by his friends to ignore it. On the night of August 31 he was arrested near his birthplace in Alella and conveyed to Barcelona, where he was placed in solitary confinement to await his trial. Although a number of other prisoners were under indictment in connection with the insurrection, the examining commandant ordered a separate trial for Ferrer by court martial on the pretext that the crime with which he was charged was a military offence.

In Spain there are three distinct stages to a military trial. The first is the *Sumario*, or preliminary examination; next comes the *Plenario*, or examination of witnesses, and finally the *Vista Publica*, or public trial, devoted to a summary of the evidence and arguments of counsel.

On his second trial, as on the first, the evidence against Ferrer was of a most unsubstantial and untrustworthy character. For example: The Barcelona Chief of Police testified that he believed Ferrer to be an Anarchist, and that his conduct during the insurrection was suspicious. One witness said that a newspaper man told him that it seemed to him from what he had heard that the events were due to *Solidaridad Obrera* (a federation of labor societies), under the direction of Ferrer. Another witness was permitted to testify that according to information which he had no means of verifying, but which he believed to be correct, the riots were caused by some Anarchists led by Ferrer.

While Ferrer was in prison his house was searched several times, and among the documentary evidence against him was a proclamation found in his house, inciting the people to revolution and the assassination of high personages. Ferrer disclaimed authorship or any knowledge of this incriminating document. Other documents were produced, admittedly genuine, showing the Anarchistic trend of Ferrer's early teachings.

The public trial of Ferrer took place in the council chamber of the Model Prison of Barcelona on October 9, 1909, and lasted only five hours. The court consisted of a lieutenant-colonel as president and six

captains. Ferrer was represented by Don Francisco Galceran Guardia, a captain of engineers, as counsel. Admission was restricted to members of the press and those who held tickets, of which about 250 were present.

After the examining magistrate had read the *proces verbal* setting forth the details of Ferrer's arrest and examination, the prosecutor summarized the evidence, and concluded by demanding that the prisoner be sentenced to death or at least to penal servitude for life. Ferrer's counsel, in an eloquent response, pointed out the weakness of the evidence against the prisoner and declared that Ferrer was the victim of political animosity and religious prejudice. Ferrer himself spoke briefly in his own defence, denying that he had taken any part in the riots and asserting that his entire time in recent years had been devoted to public instruction of the young. The president then rose to announce that the council would consider their verdict in private, and the trial was over.

The verdict was death, but it was not announced until several days later. On Monday, October 11, Ferrer was removed to the prison fortress at Montjuich. On Tuesday evening a cabinet council was held in Madrid, at which the sentence of the council was ratified. That same evening Ferrer received word of his doom. Early the next morning he was led

out to face the firing squad. Priests were there to offer the consolations of their religion, but Ferrer declined to receive them. "Leave me to die in peace," he said, "for I am as firm in my convictions as you are in yours."

The execution of Ferrer aroused the most violent protests throughout the civilized world. In Spain itself it became an issue which resulted in the downfall of Senor Maura's government. The Escuela Moderna was reopened and branches were established all over Spain.

#### IV. CIVIL TRIALS





## THE TILDEN WILL CONTEST (1886-1891)

When a layman undertakes to draw his own will without legal advice, it is not surprising to see it upset in the courts after his death because of defective execution or faulty construction. When a lawyer draws his own will and it is set aside on such grounds, it is apt to be regarded as a reflection on his professional qualifications. But when a great lawyer like Samuel J. Tilden, statesman, reformer and one-time Democratic candidate for President of the United States, draws his own will, no one would suppose for a moment that any part of it could be set aside because it was not properly worded. Yet that is precisely what happened to Tilden's will, which he himself drew, and executed with due formality on April 23, 1884.

Tilden died a resident of Westchester County, New York, on August 4, 1886, and in October of that year his will was admitted to probate by the surrogate of Westchester County. The will disposed of an estate appraised at a little over \$5,000,000. Legacies and trust funds for relatives and other beneficiaries amounted to approximately \$1,000,000. The entire residuary estate of about \$4,000,000 was devised in

the thirty-ninth clause of the will to the executors and trustees named in the instrument, "to apply the same and the proceeds thereof to the objects and purposes mentioned in this my will."

Clause Thirty-fifth read in part as follows: "I request my said executors and trustees to obtain, as speedily as possible, from the legislature an act of incorporation of an institution to be known as the 'Tilden Trust' with capacity to establish and maintain a free library and reading room in the city of New York, and to promote such scientific and educational objects as my said executors and trustees may more particularly designate." The Clause then went on to authorize the executors and trustees, in the event that such corporation should be duly organized within the time specified, to convey to it the entire residuary estate, or so much thereof as they might deem expedient. The Clause ended with the following sentence: "But in case such institution shall not be so incorporated during the life-time of the survivor of the said Ruby S. Tilden and Susie Whittlesey, or if for any cause or reason my said executors and trustees shall deem it inexpedient to convey the said rest, residue and remainder, or any part thereof, or to apply the same or any part thereof to said institution, I authorize my said executors and trustees to apply the rest, residue and remainder of my property, real and personal, aft-

er making good the said special trusts herein directed to be constituted or such portion thereof as they may not deem it expedient to apply to its use, to such charitable, educational and scientific purposes as in the judgment of my said executors and trustees will render the said rest, residue and remainder of my property most widely and substantially beneficial to the interests of mankind."

On March 26, 1887 the legislature passed an act incorporating the "Tilden Trust" and authorizing it to establish and maintain a free library and reading room in the city of New York. The institution was duly organized, and the executors and trustees of the Tilden estate made to it a conveyance of the residuary estate, which was formally accepted by the trustees of the Tilden Trust.

In the meantime, however, Mr. Tilden's nephews, being heavily in debt and pressed by their creditors, had instituted proceedings in the Supreme Court to contest the validity of the Thirty-fifth Clause on the ground of indefiniteness, in that it failed to specify with sufficient clarity what disposition should be made of the residuary estate. The case came on for hearing at special term in January, 1889, and Mr. Justice Lawrence decided against the contestants and upheld the validity of the contested clause.

The plaintiffs appealed to the general term of the Supreme Court, which reversed the decision of the lower court, with one of the three judges dissenting. The executors then took the case up to the Court of Appeals, where it was argued in June, 1891 by James C. Carter and Daniel G. Rollins for the appellants and by Joseph H. Choate and Delos McCurdy for the respondents. Mr. Carter made an impressive plea for sustaining the testator's directions, so that he might "be permitted to crown a life of usefulness, although a life of contention which excited many animosities, with an act of beneficence as to which none of his fellow citizens would feel any other sentiment than praise and applause."

The Court of Appeals rendered its decision on October 27, 1891, affirming the decision of the general term and declaring the Thirty-fifth Clause void on the ground of indefiniteness and uncertainty, so that the entire residuary estate vested in the heirs-at-law on the death of the testator. The majority opinion was written by Judge Brown, with three of the seven judges concurring and three dissenting. Judge Brown in his opinion discussed at considerable length the technical points raised by the contending parties, but the meat of the whole opinion is contained in the two following paragraphs:

"As the selection of the objects of the trust was delegated absolutely to the trustees, there is no person or corporation who could demand any part of the estate or maintain an action to compel the trustees to execute the power in their favor. This is the fatal defect in the will. The will of the trustees is made controlling, and not the will of the testator.

"As was said by the learned presiding justice of the General Term, 'The radical vice of the entire provision seems to have arisen from the testator's unwillingness to confer any enforceable rights upon any qualified person or body'".

Although the effect of this decision was to defeat Mr. Tilden's provision for the great library which he had planned, the executors were enabled by a fortunate turn of events to further the same end by different means. Shortly before the final argument in the Court of Appeals, the executors and the trustees of the Tilden Trust effected a settlement with Mrs. Laura P. Hazard, a grand-niece of Mr. Tilden, who was one of the contestants and who upon the death of her grandmother, Mr. Tilden's sister, became entitled to one-half of the residue which had been conveyed to the Tilden Trust under the contested clause. This residue, while the litigation was in progress, had increased from \$4,000,000 to \$6,000,000, and Mrs. Hazard, by the settlement agreement, accepted \$975,000

as her share instead of the \$3,000,000 to which she would have been entitled if she had held out for about six months longer. The Tilden Trust was accordingly possessed, in spite of the Court of Appeals decision, of over \$2,000,000 to carry out the wishes of Mr. Tilden which the Court of Appeals held had not been clearly expressed.

Some years later, the Tilden Trust joined with the Astor Library, which was founded by John Jacob Astor, and the Lenox Library, founded by James Lenox, in an agreement with the city of New York whereby the city was to erect a new and commodious structure for an enlarged free library consisting of the Astor and Lenox collections and maintained by the combined resources of the Astor and Lenox Foundations and the Tilden Trust. The noble edifice which now adorns the corner of Fifth Avenue and Forty-second Street, and which was erected on the site of the old reservoir at a cost of \$9,000,000, is the fruit of this public-spirited project, to which the vision and the affluence of Samuel J. Tilden so substantially contributed.

LAIDLAW vs. SAGE  
(1893-1899)

A stranger walked into the offices of Russell Sage, millionaire capitalist and railroad magnate, at Broadway and Rector Street in the city of New York shortly after noon on December 4, 1891. The man, whose name was subsequently found to be Norcross, said that he wanted to see Mr. Sage about some railroad bonds and that he had a letter of introduction from Mr. Rockefeller. When asked to mail it to Mr. Sage he said that he preferred to present it in person, and that he only wanted to say two or three words.

When this message was brought in to Mr. Sage he stepped from his private office into the ante room, went to the window and looked into the lobby, where he saw Norcross resting on a settee. At this moment Mr. Sage was accosted by another man, William R. Laidlaw, Jr., who said that he had a message from a friend of Mr. Sage. Laidlaw was admitted to the ante room, and while Mr. Sage was at the door he was approached by Norcross, who carried a carpet bag in his left hand and handed Mr. Sage the supposed letter of introduction.

The letter was not from Mr. Rockefeller. It was a typewritten communication reading in substance as



follows: "The bag which I hold in my hand contains ten pounds of dynamite. If I drop it on the floor, the dynamite will explode and destroy this building in ruins and kill every human being in the building. I demand \$1,200,000, or I will drop the bag. Will you give it? Yes or no?"

After he had read this startling letter, Mr. Sage, with remarkable composure, endeavored to temporize with the madman. He folded the letter, handed it back to Norcross and said that he had an engagement with two gentlemen, that he was short of time, and that if it were going to take much time he preferred to have him come back later in the day. Norcross replied: "Then do I understand you to refuse my offer?"

"Oh, no, I don't refuse your offer," said Mr. Sage. "I have an appointment with two gentlemen. I think I can get through with them in about two minutes, and then I will see you."

Norcross walked backwards toward the door by which he had entered, holding the bag at the end of his fingers. Mr. Sage stepped back toward a table in the ante room by which Mr. Laidlaw was standing. When Norcross reached the threshold he remarked to Sage: "I rather infer from your answers that you refuse my offer;" to which Mr. Sage replied: "Is there anything in my appearance that would lead you to

think I would not do as I say I would?" He repeated also that he had another appointment and that he would see him as soon as he was through.

Norcross without further parley then dropped the bag, and a terrific explosion followed. Mr. Sage's offices with all their furniture were completely wrecked. A locked steel safe in an adjoining room was blown open and its contents strewn about the floor, and every person in the room was either killed outright or seriously injured. Norcross was blown to pieces, and one of the clerks in Sage's office was hurled through the window to his death on the pavement below. Mr. Sage himself miraculously escaped serious injury, but Laidlaw, who was thrown to the floor with Mr. Sage, did sustain painful injuries.

Laidlaw subsequently brought suit against Mr. Sage to recover damages for the injuries which he had received, claiming that Sage, while he was engaged in conversation with Norcross, had placed his hands on Laidlaw's person and changed the position of his body so as to interpose it as a shield between himself and his assailant.

The action was commenced in the Supreme Court on May 26, 1892, and was reached for trial in June, 1893. The plaintiff testified that upon entering the office he passed the defendant and Norcross, who were conversing in the lobby near the door of the ante

room; that he entered the ante room, went to a desk or table near the center of the room, where he stood waiting for the defendant, with his back to the door. Once or twice he glanced over his shoulder and saw the defendant and Norcross in conversation, but he could not hear what they were saying. Presently the defendant came within range of his vision on his left side, walked over to him and placed his hand on his shoulder. The defendant then dropped his left hand and took plaintiff's right hand in his and gently moved him over about fifteen inches in the direction of Norcross. His testimony continued: "I was in a line between Mr. Sage and Mr. Norcross. Mr. Sage rested one thigh on the corner of the table and then said over my shoulder to this stranger: 'If I trust you why can you not trust me?' or words in that general line and to that effect, and then the explosion immediately followed."

At the close of the plaintiff's case the complaint was dismissed by the court on motion of defendant's counsel, on the ground that the plaintiff had failed to establish any proper connection between the alleged act of the defendant and the independent act of Norcross which caused the injury; in other words, that the acts of the defendant were not shown to be the proximate cause of plaintiff's injuries. This decision was reversed on appeal and a new trial ordered by the Gen-

eral Term of the Supreme Court, which held that the question of proximate cause was not involved; that if the defendant touched the plaintiff and caused him to change his position with an intent to shield himself, he was guilty of a wrongful act; and if the plaintiff was injured by the catastrophe then the burden of proof was upon the defendant to show that his wrongful act did not contribute to the injury.

On the second trial the defendant testified that when he reached the corner of the table the plaintiff was about four feet from him, and that they were in that position when the explosion occurred. He denied that he had placed his hands on the plaintiff's person until after the explosion, when he lifted him from the floor. He asserted that plaintiff was not between him and Norcross at the time of the explosion; that at no time did he intend interposing the body of plaintiff between himself and Norcross, and that he did not even put himself behind the plaintiff. The defendant's testimony was corroborated in most of its essential particulars by a man who was in the office at the time, and also to some extent by indirect proof.

This time the case was allowed to go to the jury, which was instructed in accordance with the principles laid down in the opinion of the appellate court. The verdict of the jury, rendered on April 5, 1894, awarded \$25,000 damages to the plaintiff. The defendant's

attorneys took an appeal, chiefly on the ground that the trial court had refused a request to charge the jury as follows: "If the jury find from the evidence that the defendant did take the plaintiff and use him as a shield, but that this action was involuntary, or such as would instinctively result from a sudden and irresistible impulse in the presence of a terrible danger, he is not liable to the plaintiff for the consequences of it." The General Term again reversed the judgment on the ground that the court had erred in refusing to so charge the jury.

The third trial resulted in a disagreement by the jury. On the fourth trial the court charged the jury that if the defendant involuntarily put his hands upon the plaintiff in a moment of great excitement, without meaning to interfere with him, he would not be responsible; but that if they found that the defendant had deliberately and intentionally put his hand upon the plaintiff and changed his position, then the plaintiff was entitled to a verdict. Mr. Sage had testified, in this connection, that he was in perfect possession of his senses, that he recollected everything that was done, and that everything he did there was done intentionally. The jury accordingly returned a verdict again for the plaintiff.

The defendant took another appeal, this time to the Appellate Division of the Supreme Court, which re-

fused to interfere with the verdict. The case was then carried to the Court of Appeals, which on January 10, 1899, reversed the decision of the Appellate Division and the trial court and ordered a new trial. The opinion of the court, however, was such as to make it futile for the plaintiff to revive the action. The Court of Appeals based its decision on various errors of the trial court, such as the admission of improper evidence and improprieties in the cross-examination of the defendant, but principally on the ground that the question of proximate cause, contrary to the opinion of the General Term, was an issue in the case, and that the plaintiff had failed to prove that the acts of the defendant were the proximate cause of his injuries.



## V. CRIMINAL TRIALS





CAPTAIN WILLIAM KIDD  
(1701)

Captain William Kidd sailed from England in April, 1696, with a royal commission to pursue and seize pirates in the Indian seas. He was also authorized to seize any ships or goods belonging to the French, with whom England was then at war. His ship carried thirty guns and a crew of about eighty men. His immediate destination was the port of New York, where upon his arrival he proclaimed his design to proceed to Madagascar, a favorite rendezvous of the pirates, and invited more adventurous spirits to join him. When he left New York in February of the following year his crew had been augmented to 155 men. In July, 1697, he sailed to Bab's Key, a small island at the entrance to the Red Sea, where he established a base of operations. Instead of going after the pirates, however, he turned pirate himself, and so notorious a pirate did he become that his name has been inseparably associated with piracy ever since.

His first encounter was with the so-called Mocca fleet, a group of about fifteen merchant vessels which sailed together from Mocca for their mutual protection against pirates. When they came within range of his vessel Captain Kidd fired at them, but he dis-

covered that they had a convoy of English and Dutch warships, which returned his fire. He then gave up the attack and sailed away. Shortly afterwards he captured a small Moorish vessel from Bombay, which yielded nothing more than a bale of coffee, a bale of pepper and a small quantity of Arabian gold. For several months he cruised along the coast of Malabar, where he committed a great many piracies and robberies. On one occasion he fell in with the crew of another notorious pirate named Culliford, who had heard of Kidd's royal commission, but not of his piratical exploits. When they were brought before Captain Kidd they fully expected to be taken and hanged, but Kidd assured them that he would rather that his soul should broil in hell than that he should do them any harm. By way of confirming his expression of goodwill to them he gave them guns and ammunition and other needed supplies.

Kidd was finally arrested and brought back to England, where he was indicted for piracy on several counts and also for the murder of his gunner, William Moore. He was first tried on the murder indictment, on May 8, 1701. The prosecution showed that the prisoner had gotten into an argument with Moore about a ship which some of the crew a short time before wanted to take, while others did not. Kidd called Moore a "lousy dog," to which Moore replied,

"If I am a lousy dog you have brought me to it; you have ruined me and many more." Kidd then picked up an iron-bound bucket and struck Moore on the side of the head with it. The blow fractured Moore's skull and he died the next day.

Kidd's defence was that he did not strike Moore with the bucket, but only threw it at him, and that the blow was too slight to have been the cause of his death. The only testimony to support this defence was that of another member of the crew, who said that he had heard the surgeon say, when he attended Moore, that the blow was not the cause of his death. This was refuted, however, by the direct testimony of the surgeon himself, who gave it as his opinion that the blow was the cause of Moore's death, and denied that he had ever said anything to the contrary. On this evidence the jury deliberated about an hour and then brought in a verdict of guilty.

The following day Kidd was placed on trial on the first count of the piracy indictment, charging him with the seizure of a Moorish vessel, "The Quedagh Merchant", which was at the time on a trading voyage from Bengal to Surat. The witnesses for the prosecution were two members of Kidd's crew, Robert Bradinham and Joseph Palmer. Bradinham testified that some time in January, 1698, Kidd pursued the "Quedagh Merchant" under French colors; that when

he came up with her he took the captain (who was an Englishman) prisoner and sent his men aboard to take possession of the ship and its cargo. The cargo was sold on the coast and the proceeds, between seven and eight thousand pounds sterling, were divided among the crew. There were one hundred and sixty shares in all, of which Captain Kidd had forty, while the crew had each one or one-half share, according to the nature of their service. Palmer testified to the same effect; and he also testified that at no time did Captain Kidd carry or attempt to carry any of the ships that he seized to the most convenient port, in accordance with the terms of his commission, in order to have them condemned.

Captain Kidd's defence was that all of the ships that he took were sailing under French commissions or passes. The judge remarked that if that were true he should have condemned the ships by due process and not taken it upon himself to divide the spoils. His reply was that he could not do so because of the mutiny in his ship; but the existence of such mutiny was not established by any additional proof. When asked by the judge why he did not take the pirate Culiford when he had the opportunity to do so, his excuse was that a great many of his crew were ashore at the time. He answered evasively when the judge questioned him about his friendly relations with Cul-

liford and the assistance which he had given him. He attempted to substantiate his statement about the French passes by the testimony of several witnesses, but none of them could testify that a French pass had been seen on the "Quedagh Merchant". He also called several character witnesses who testified to his loyal services to the crown in the West Indies before he received his piracy commission.

In his argument to the jury the king's counsel laid stress on the fact that the prisoner had secured so many additions to his crew at the port of New York on the inducement that whatever they took would be divided among themselves, thus showing that his designs had been unlawful at the outset of his venture. He also made much of Kidd's friendly association with the pirate Culliford, who was also under indictment for piracy at the time of Captain Kidd's trial.

The jury, after deliberating half an hour, found the prisoner guilty. When the sentence of death was pronounced against him and the members of his crew who had been tried at the same time and found guilty, Captain Kidd said to the court:

"My lord, it is a very hard sentence. For my part I am the innocentest person of them all, only I have been sworn against by perjured persons."

He was shortly afterwards executed by hanging according to the sentence.

EUGENE ARAM

(1759)

Eugene Aram was a schoolmaster in the town of Knaresborough, England, who was highly esteemed in his small community, although his relations with his wife, it seems, were not of the most exemplary. According to one commentator, Aram considered himself so far above his wife that he would not speak to her when he met her on the street.

Among Aram's companions in Knaresborough was a cobbler named Daniel Clarke, a lover of books and of gardening, two tastes which he had in common with Aram. He also associated on intimate terms with one Richard Houseman, a flax dresser by trade.

Early in the year 1744, Clarke, in preparation for his approaching marriage, obtained from local tradesmen jewelry and other merchandise of considerable value on credit, and loans of money besides. He disappeared on the night of February 7, and it was generally assumed, after the lapse of several days, that he had absconded with the goods which he had received on credit, as they had also disappeared from his home. His creditors offered a reward of fifteen pounds for the recovery of the property.

Because of his known intimacy with Clarke, Aram was suspected of privity in the fraud. His house and

grounds were searched, and some of the missing goods were found in his house or buried in the garden. Houseman's home was also visited, resulting in the recovery of some leather which Houseman claimed to have received from Clarke as security for a loan.

On February 10, Aram was arrested for non-payment of a small debt due to one Norton. To the astonishment of the officer who arrested him, and who knew him to be a poor man, Aram produced over a hundred guineas from his breeches pocket and offered to pay the debt at once. The debt was discharged and Aram was released, but the display of so much money at the time of his arrest cast fresh suspicion upon him in connection with Clarke's disappearance, and he was arrested again on the charge of receiving the proceeds of Clarke's fraud. This charge was dismissed, however, for lack of evidence.

The following April Aram quietly departed from Knaresborough, abandoning his wife and children. He is said to have gone to London, but little was known of his movements until February, 1758, when he received an appointment as usher in the Lynn grammar school.

In August of that year a laborer who was digging on Thistle Hill, overlooking Knaresborough, uncovered the skeleton of a human being. The discovery



was immediately associated with the disappearance of Clarke fourteen years before. A coroner's jury was assembled and at the conclusion of their hearing rendered a verdict that the remains were those of Daniel Clarke, and that he had been murdered. Among the witnesses was Aram's wife, who testified that on the night of Clarke's disappearance he and Houseman had been with Aram in the latter's house, that the three had left the house together and that Aram and Houseman had returned without Clarke. She expressed the belief that Clarke had been murdered by Houseman and her husband.

Houseman was at once arrested on suspicion of murder, and when he was asked to examine one of the bones which had been found he said, "This is no more Clarke's bone than it is mine!" Such a statement only tended to incriminate him further, and when his examination was resumed the next day he signed a confession in which he stated that Clarke had been killed by Eugene Aram at the entrance to St. Robert's cave and that he had been a witness of the murder. He described the exact spot in the cave where the body had been buried, and at the place which he had designated another skeleton was exhumed, which the coroner's jury, inconsistently with its previous verdict, promptly declared to be the skeleton of Daniel

Clarke. They also found that he had been murdered by Eugene Aram and Richard Houseman.

The following day Aram was arrested in his school-room at Lynn. At first he denied any acquaintance with Clarke or Houseman or that he had ever lived at Knaresborough, but these statements he retracted when confronted with a constable of Knaresborough who had known him there. He was taken before a magistrate for examination and finally signed a confession in which he admitted some participation in Clarke's fraud, but asserted that he knew nothing of his murder. His explanation was that on the night of February 7 he had gone with Houseman and Clarke to St. Robert's cave for a division of the spoils, but that he had waited outside while Clarke and Houseman went into the cave. When Houseman rejoined him later without Clarke, Houseman told him that Clarke had already gone off.

The trial of Houseman and Aram was delayed until a year later. In Houseman's case no evidence was taken, and the court directed the jury to return a verdict of not guilty, this being in consideration of Houseman's turning King's evidence. He was the first witness placed on the stand against Aram. The substance of his testimony was that he had been with Clarke at Aram's house on the morning of February 8; that they left the house between two and three

o'clock and Aram asked him to go along with them a short way. He followed them to St. Robert's cave, where Aram and Clarke stopped, and he saw Aram strike Clarke, and saw Clarke fall to the ground. He immediately came away. The next day Aram visited him and told him that he had killed Clarke and described where he had concealed the body. His reason for not reporting the matter was that he had been deterred from doing so by Aram's threats of injury.

William Tuton, a mason of Knaresborough, was the next witness. He said that Clarke had called at his home between eleven and twelve o'clock on the night in question, to leave some leather. Later in the night, between two and three o'clock, he called again for the same purpose and brought Tuton out of bed. It was a moonlit night, and while he was talking to Clarke he recognized Aram and Houseman lurking in the shadows outside. Two or three days later he found in Aram's house a mason's pick or hammer belonging to him and which he had missed from his yard.

Stephen Latham, the officer who first arrested Aram, was placed on the stand to tell of the large sum of money which Aram had on his person and displayed when he was arrested. John Barker, the Knaresborough constable, testified to the contradictory statements made by Aram at the time of his arrest in the

schoolroom at Lynn. He was followed by the medical experts, who testified that they had found a fracture in the back of Clarke's skull, that it was produced before death and caused by a blow from some blunt instrument, such as the mason's hammer described by Tuton in his testimony. The prosecution concluded its proof with the testimony of the magistrate who had examined Aram, and with the introduction of Aram's written confession, with its many erasures, interlineations and corrections, to show the laborings and perplexity of a guilty mind. In his closing address for the Crown the King's counsel pointed out that the evidence submitted positively implicated Aram by proof of motive, opportunity and subsequent conduct inconsistent with innocence.

Aram conducted his own defence without the aid of counsel. He called no witnesses, relying entirely on an eloquent and scholarly address to the court, the main purpose of which was to attack the proof of the *corpus delicti*, that is, the lack of positive proof that the skeleton found was that of Daniel Clarke, or that Clarke was dead at all. He showed that human skeletons or bones were frequently found in caves and other hermitages, citing various instances. The fact that this skeleton was found where Houseman said it would be, was only a casual coincidence, he argued. One of the strong points which he brought out was

the contradictory findings of the coroner's jury, which had successively passed upon two skeletons and pronounced each of them to be Clarke's. He dwelt at some length on the fallibility of circumstantial evidence, such as had been introduced against him. His address will be found in Bulwer-Lytton's novel, "Eugene Aram." As a literary composition it possesses considerable merit, but it failed to convince the jury, for they found Aram guilty. He was hanged shortly after, and his body was suspended in chains on public view near the town of Knaresborough.

According to some accounts, Aram confessed to the murder before he was executed, but this is disputed by others, and no doubt the question of his guilt or innocence will always be the subject of controversy.

DANIEL E. SICKLES  
(1859)

One of the most celebrated cases in which the Unwritten Law was successfully invoked for the defence of a man charged with murder was the trial of Hon. Daniel E. Sickles, member of Congress from New York, for the murder of Philip Barton Key.

The victim was a son of Francis Scott Key, author of "The Star-Spangled Banner." He was a lawyer by profession, and several years prior to his death he had been United States District Attorney in Washington. He had been on friendly terms with Sickles and was a frequent guest at the Congressman's residence. His attentions to Mrs. Sickles, a woman of exceptional beauty, had aroused some comment in Washington society. On February 25, 1859, Sickles received an anonymous letter telling him that Key had rented a house in the negro quarter which he used for his assignations with Mrs. Sickles. Having first verified this information through a friend, Sickles confronted his wife with the accusation and the evidence, whereupon she made a complete confession of her guilt.

On Sunday morning, February 27, Sickles concealed himself behind the draperies of a front window,

and there he saw Key ride past the house and wave his handkerchief as a signal to his mistress. That afternoon he met Key on the street. Drawing a deringer from his pocket, he fired three shots into Key's body, exclaiming, "Key, you scoundrel, you have dishonored my home, and you must die!" Key died a few minutes later, and Sickles surrendered himself at the house of Attorney-General Black.

Sickles was indicted for murder on March 24. He entered a plea of not guilty, and was placed on trial before Judge Crawford in the Criminal Court for the District of Columbia on April 4. The prosecution was conducted by Robert Ould and James M. Carlisle. Sickles was defended by James T. Brady and John Graham of New York, Edwin M. Stanton of Washington and several lesser luminaries of the local bar. The selection of the jury was completed on April 7, and Mr. Ould delivered the opening speech to the jury. It was an address of singular moderation and brevity for a public prosecutor, and to read it in print gives one the impression that Ould went about his sworn duty in a rather half-hearted and perfunctory fashion. He then introduced the testimony of eye-witnesses to the shooting, the surgeon who examined the body and the coroner who held the inquest. Over the objection of Mr. Brady the pistol, which was found lying on the sidewalk near the victim, and one of the bullets

which had been taken from his body, were also put in evidence.

On April 9 Mr. Graham began his celebrated opening address for the defence, a speech of some 42,000 words, the delivery of which took up nearly two days. The introductory and closing paragraphs of Graham's speech are fine examples of the florid and grandiloquent style, bordering sometimes on bathos, which was still in vogue at that time. Early in his remarks he indicated what the defence would be, in his scathing denunciation of Key as a confirmed adulterer. The mere fact that Key's last attempt at an assignation with his mistress had taken place on Sunday moved Graham to such labored eloquence as this: "On a day too sacred to be profaned by worldly toil—on a day on which he was forbidden to moisten his brow with the sweat of honest labor—on a day on which he should have risen above the grossness of his nature, and though on no other day he had sent his aspirations heavenward, he should have allowed them then to pass in that direction—we find him besieging with the most evil intentions that castle where, for their security and repose, the law had placed the wife and child of his neighbor." Had it been William Travers Jerome, a half-century later, he would have put the same thing more tersely—something like this,



perhaps: "On Sunday morning, bright and early, this gay young philander was on the job."

Graham was really at his best in his argument when he forsook his flowery phrases and proceeded to discuss the law applicable to the case. He showed that under the common law where the provocation for a killing was adultery the crime was reduced in degree from murder to manslaughter. Among the authorities quoted was Lord Hale in *Mawgridge's Case*, 17 St.Tr. 79: "When a man is taken in adultery with another man's wife, if the husband shall stab the adulterer, or knock out his brains, this is bare manslaughter; for jealousy is the highest rage of man, and adultery is the highest invasion of property." He also quoted extensively from scriptural texts to show in what execration the crime of adultery was held in Biblical times, as for example, verse 10 of the 20th chapter of Leviticus: "And the man that committeth adultery with another man's wife, even he that committeth adultery with his neighbor's wife, the adulterer and the adulteress shall surely be put to death."

The evidence for the defence began with the testimony of the prisoner's friends, some of whom told of the friendly relations which had subsisted between the prisoner and the deceased. Others who had seen him on the day of the shooting or the day before testified to his frenzied or distracted state of mind at the

time. Mrs. Sickles' maid testified to a scene between husband and wife on the night before the killing. The defence then offered to put in evidence a statement signed by Mrs. Sickles on Saturday night, in which she confessed in some detail to her misconduct with Key. Referring to her meetings with Key in the house which he had rented, she said naively: "I did what is usual for a wicked woman to do." The feminine instinct to describe what she wore was too powerful, even in that moment of humiliation, to be resisted. "As a general thing, have worn a black and white woolen plaid dress, and beaver hat trimmed with black velvet. Have worn a black silk dress there too; also a plaid silk dress, black velvet coat trimmed with lace, and black velvet shawl trimmed with fringe."

Over the proposed introduction of this document, vibrant with human interest, opposing counsel debated at considerable length. Judge Crawford finally sustained the prosecutor's objection to the admission of the paper, saying that "it would have a most injurious effect upon the relations of husband and wife, in destroying their confidential identity."

Another controversy arose almost immediately after, over the admissibility of any other evidence offered by the defence to prove the adulterous relations between Mrs. Sickles and the deceased and that they had

been brought to the prisoner's knowledge. In the course of this argument, which began on April 14 and did not terminate until four days later, contending counsel became so worked up that the court was frequently obliged to call them to order. When the battle was over, the judge ruled that such evidence was admissible. The defence then wound up its proof with the testimony of witnesses who had seen Mrs. Sickles and Key together at their house of assignation or elsewhere, or had observed Key waving his handkerchief to her as he passed her house.

The presentation of evidence was completed on April 22. For several days following, the air was surcharged with more fervid oratory. Closing speeches for the defence were made by Stanton and Brady. Stanton again reviewed the authorities, American as well as English, on the subject of adultery as a justification for homicide. A prolonged burst of applause from the spectators, which the court attendants were unable to check, was evoked by this impassioned utterance: "The death of Key was a cheap sacrifice to save one mother from the horrible fate which on that Sabbath day hung over this prisoner's wife and the mother of his child."

On April 26, Ould closed for the prosecution, and the judge gave his instructions to the jury. The most favorable instruction, given at the request of the de-

fence, was this: "If the jury believe that from any predisposing cause the prisoner's mind was impaired, and at the time of killing Mr. Key he became or was mentally incapable of governing himself in reference to Mr. Key as the debauchee of his wife, and at the time of committing said act was by reason of such cause unconscious that he was committing a crime as to said Mr. Key, he is not guilty of any offence whatever."

The jury was out for one hour and ten minutes and returned a verdict of not guilty.

When the Civil War broke out Sickles raised a brigade of volunteers and was commissioned a Colonel. He fought with distinction at Chancellorsville and Gettysburg, and was promoted to the rank of Brigadier-General in 1861 and to Major-General the following year. From 1869 to 1873 he served as United States Minister to Spain.

## THE KU KLUX KLAN (1871)

The Ku Klux Klan which was organized in the Southern States during the Reconstruction Period following the Civil War is not to be confused with the twentieth-century organization which has adopted the same name and some of the methods of the earlier order. The organization of the original Klan, and to some extent their acts as well, were certainly justified by conditions in the South for a few years immediately following the Civil War, when that section of the country was subjected to the rule of "carpet baggers" from the North, who appointed illiterate negroes to public office and in other ways harassed the people until they were obliged to organize for self-protection. To make their organization the more effective, it took the form of a secret order with robes and solemn ritual, with the object of presenting a supernatural and terrifying aspect to the negroes, many of whom had grown insolent and overbearing with their newly gained freedom.

In the spring of 1867 the Klan held a convention at Nashville, Tenn., of delegates from all the Southern States. They adopted a declaration of principles in which the special objects of the order were stated as

follows:\* (1) To protect the weak, the innocent and the defenceless from the indignities, wrongs and outrages of the lawless, the violent and the brutal; to relieve the injured and oppressed; to succor the suffering, and especially the widows and orphans of the Confederate soldiers. (2) To protect and defend the Constitution of the United States and all laws passed in conformity thereto, and to protect the States and people thereof from all invasion from any source whatever. (3) To aid and assist in the execution of all constitutional laws, and to protect the people from all unlawful seizure, and from trial except by their peers in conformity to the laws of the land.

It was inevitable, of course, that the Klan, although formed originally for worthy objects and composed of reputable persons, headed by the ex-Confederate General Nathan B. Forrest, should in time attract to its ranks unprincipled and desperate men who went so far beyond the purposes of its founders as to commit murder and lesser atrocities on little or no provocation. In some sections the Klan embarked on a definite campaign to terrorize the negroes so as to keep them away from the polls at election time, in contravention of their recently acquired constitutional rights.

\* Ku Klux Klan: J. C. Lester and D. L. Wilson (1884).

From the official report of the proceedings in the U. S. Circuit Court at Columbia, S. C., for the November term, 1871, it appears that the Federal Grand Jury in session there found indictments against a number of Klan members on the charge of conspiring to prevent certain citizens of African descent from exercising their right to vote. The first group of four defendants were placed on trial before Judge Bond in the United States District Court on December 4. The prisoners were represented by Reverdy Johnson and Henry Stanberry, ex-Attorney-General of the United States. After motions to quash the indictment had been denied by the court, the defendants on December 9 entered a plea of guilty and threw themselves on the mercy of the court. Sentence was deferred pending the trial of Robert Hayes Mitchell, a prominent member of the Klan who had pleaded not guilty.

The indictments against Mitchell charged him with conspiracy to prevent colored voters from exercising their right to vote, and on a second count with conspiracy to oppress, threaten and intimidate one Jim Williams, a negro, for having voted at an election in October 1870. There was a third count in the indictment, but it was withdrawn by consent of the district attorney on motion of defendant's counsel.

Mitchell's trial began on December 11. The government introduced proof showing the existence of

the Klan organization in the county of York; that it had a constitution and by-laws and that the members were bound to secrecy by an oath, the violation of which was punishable by death. It was shown that in the year 1871 large numbers of colored citizens who were entitled to vote were visited by the Klan and whipped, and some of them murdered. On the night of March 6, 1871, according to the prosecution's witnesses, most of whom were ex-members of the Klan, some fifty or sixty of their number assembled in an old muster field called the Briar Patch. They were mounted, armed, and attired in the full regalia of the Klan, consisting of a robe that covered the body and a hood with a mask concealing the features. They went to the home of Gadsden Steele, a negro, whom they roused out of bed at ten o'clock. They struck him over the head and marched him out with the command to "talk to No. 6," who was sitting on his horse in the lane. No. 6 was equipped with a pair of horns, and when Steele appeared before him he made a mock bow to the negro and then gored him in the breast with his horns "Show us the way to Jim Williams' house, or we will kill you!" he said to Steele. Another Klansman remarked, "Don't tarry here too long with this damn nigger; we have to get back to hell before day-break." They then proceeded to Jim Williams' house, which they reached about two o'clock in the morning.



They broke in the door, took Williams out to the woods nearby, fastened a rope about his neck and hanged him to a pine tree.

The defence introduced testimony to show that Jim Williams, just before his death, was organizing a company of militia and supplying them with Winchester rifles and ammunition. A white neighbor of Williams' testified to a conversation with him in which Williams had said: "In case we don't succeed in carrying the next election we will kill from the cradle up, and we will apply the torch in every direction; we will lay waste the country generally." Other reputable white residents of the county testified to the general feeling of alarm or insecurity among the whites by reason of Jim Williams' threats and the arming of the negroes.

Mr. Stanberry in his address to the jury, the majority of which were colored, argued that the government's proof was insufficient to convict the defendant, because although Mitchell was shown to have been present at the Klan gathering on the night of March 6, he had not been identified as one who had taken part in the hanging of Williams; and in any event the proof did not conform to the indictment, because Mitchell's understanding when he joined the expedition was that its purpose was only to disarm the negro-

es who had guns, and the prosecution had failed to show anything to the contrary, so far as the defendant was concerned.

The jury found Mitchell guilty on the second count, but not guilty on the first. When the prisoner was asked what he had to say for himself before the court should pass sentence he replied: "Well, sir, I might say right smart, and then it mightn't be much benefit. I came down here with the intention of pleading guilty, but my lawyer kept me from it and said it was best for me not to do it. I wasn't guilty of the charge, although I was guilty of being on the raid, but I didn't do anything to anyone that night. I didn't know a thing about it until Sunday evening. The man was hung on Monday, and I never heard his name before in my life; I didn't know anything about it at all."

The court was impressed by the prisoner's frankness, and sentenced him to eighteen months' imprisonment and a fine of \$100. Similar sentences were imposed on various other defendants who had either pleaded guilty or had been so adjudged after trial. The heaviest sentence was received by John W. Mitchell, a prominent Klan chief who was found guilty of leading raids against colored persons in which the victims were shot, whipped or otherwise maltreated. He was sentenced to five years' imprisonment and \$1,000 fine.



WILLIAM M. TWEED  
(1873)

The depredations of the notorious Tweed Ring on the treasury of New York City began to assume scandalous proportions early in 1869. The Ring was composed of William M. Tweed, Grand Sachem of Tammany Hall and Deputy Street Commissioner; Mayor A. Oakey Hall; Peter B. Sweeney, City Chamberlain, and Richard B. Connolly, City Comptroller. Their opportunities for plunder on a large scale were greatly augmented in the year 1870, when, under the provisions of the newly-enacted Tweed charter, these four men comprised the Board of Audit. All municipal expenditures were controlled by this Board, and at its first meeting on May 5, 1870, it authorized the payment of bills amounting to \$6,312,000, of which about 90% was subsequently found to be fraudulent and to have been divided among the members of the Ring.

Some of the most glaring frauds of the Ring were perpetrated in connection with the new County Court House on Chambers Street. The price paid by the taxpayers for this ungainly structure and its furnishings was something in excess of \$12,000,000, and fully three-fourths of this amount, it has been es-

timated, found its way into the pockets of Tweed's Ring. For carpets alone there was a bill of \$221,799; awnings cost the taxpayers \$41,746; three tables and forty chairs, \$179,729; "brooms, etc." \$41,190; thermometers, \$7,500. Andrew J. Garvey, a plastering contractor who was closely identified with the Ring, received \$531,594, according to the books, for his plastering work in the Court House, and \$1,294,684 for repairs before it was finished!

For a year or more the newspapers of New York had been accusing the members of the Tweed Ring of corruption and plunder, but it was not until the summer of 1871 that any concrete evidence was obtained to substantiate their charges. On July 8 the New York "Times" began the publication of transcripts from Connolly's books which had been secretly copied by two city employees and turned over to George Jones, publisher of the "Times." For nearly two weeks the "Times" continued its exposure of the monstrous frauds, with names, dates, and amounts. When confronted with these disclosures Tweed remarked with a snarl: "Well, what are you going to do about it?"

When the same question was put to the citizens of New York at an indignation meeting held in Cooper Union on September 4, a man in the audience shouted, "Hang them!" Resolutions were offered by Joseph

H. Choate and unanimously adopted, demanding the repeal of the Tweed charter, the resignation of Hall, Connolly and Tweed, and the appointment of a committee of seventy to carry out the objects of the meeting, including the recovery of the stolen money.

Among the chief advisers of the committee appointed at the Cooper Union meeting was Samuel J. Tilden, chairman of the Democratic State Committee and relentless foe of Tweed. It was not an easy task that lay before the committee, because the Ring controlled all of the public offices and the judges in all of the local courts. The committee's first move was to start a taxpayer's suit against the city, praying for an injunction to prohibit the Mayor and his subordinates from making any disbursements of the city's funds. The suit was commenced on September 7, before Judge George G. Barnard, who had always been a servile tool of Tweed's. Much to nearly every one's surprise, Judge Barnard granted the injunction, and thus paved the way for the downfall of his political master. Barnard was not credited with any public-spirited motives in making this decision, for it was rumored that the prospective nomination for governor was the inducement for his betrayal of the Ring.

Connolly saw the handwriting on the wall, and on September 18, after a conference with Tilden, he agreed to cooperate with the Committee of Seventy

and to appoint a member of the Committee as one of his deputies in the Comptroller's office. On October 17 Charles O'Connor was named a special deputy attorney general to bring suit against members of the Ring for recovery of the money they had stolen. A week later Tilden obtained a warrant for Tweed's arrest, charging him with the fraudulent appropriation of over \$6,000,000 from the city treasury. Tweed was arrested in his office the next day and immediately furnished bail in the sum of \$2,000,000 through Jay Gould and other wealthy friends.

On December 18 the grand jury found two indictments against Tweed, one for forgery and one for grand larceny. Other indictments followed, and proceedings were adjourned from time to time during the following year. Tweed was finally placed on trial before Judge Noah Davis in the Court of Oyer and Terminer on January 7, 1873. Among his lawyers were David Dudley Field, John Graham, eminent criminal trial lawyer and Elihu Root, who was then a young man of twenty-eight. The principal witnesses against the defendant were Tilden and Andrew Garvey, who had turned State's evidence upon promise of immunity. Garvey testified that he had supplied Tweed with some of the money used to bribe legislators to pass Tweed's charter. He also stated that he had been asked by Tweed to con-

tribute with other contractors to a fund for bribing a legislative committee which was threatening to investigate the Tweed Ring.

The case went to the jury on January 30, but they were unable to agree on a verdict and were discharged the next day. Tweed remarked, "I am tired of the whole farce. No jury will ever convict me." It was freely rumored, however, that the jury had been packed by Tweed. Four other indictments were returned against him and on November 5 he was placed on trial for the second time. Nine days were consumed in the selection of a jury. Then the prosecution disclosed that their detectives had seen a police captain in private conversation with Tweed and later with one of the jurors. This juror was dismissed with the censure of the court, and another was selected in his place.

The second trial, which was also held before Judge Davis, lasted four days. The evidence was practically the same as in the first trial, but this time the jury returned a verdict of guilty on 204 out of the 220 counts in the indictments. The maximum penalty under any one count was a fine of \$250 or a year in prison, or both. The district attorney, in his request for imposition of sentence, argued that the defendant was liable to a cumulative sentence of 102 years and a fine of \$25,000. This contention was opposed by counsel



for the prisoner, who insisted that only the maximum sentence on any one count could be imposed. Judge Davis took a middle ground and fixed the sentence at twelve years in prison and a fine of \$12,750. Upon the advice of his attorneys Tweed paid only \$250 of the fine, and after he had served a little over a year on Blackwell's Island the Court of Appeals ordered his release on the ground that irrespective of the number of counts in an indictment, no punishment could be inflicted in excess of the maximum penalty for a single offence.

In the meantime a law had been passed authorizing the State to sue for moneys stolen from any public treasury. Tweed was released on January 15, 1875, but was rearrested in a civil action brought against him by the State to recover the sum of \$6,000,000. Bail was fixed at \$3,000,000, which he was unable to furnish. He was then committed to the Ludlow Street jail, where he was kept for nearly a year. His confinement here was not very rigorous, for nearly every day he went for a drive in a closed carriage in the custody of two keepers. On the way back they would stop for dinner at Tweed's home. On December 4, 1875, his two keepers sat in the drawing room of Tweed's mansion at 43d Street and Fifth Avenue while Tweed went upstairs to talk to his wife. When it was time to start back to Ludlow Street they were

unable to find their prisoner. For three months, while a reward of \$10,000 was offered for his capture, he remained concealed in an old farmhouse in New Jersey across the river from New York. From here he escaped to Cuba by way of Florida, and on July 27 he was reported to have sailed on the Spanish brig *Carmen* from Santiago on July 27, 1876, bound for Spain. The Spanish authorities were notified. They recognized the fugitive from one of Nast's cartoons. He was arrested and placed on board the U. S. S. *Franklin* which reached New York on November 23. He was sent back to the Ludlow Street jail and kept in strict confinement. He subsequently appeared as a voluntary witness before an aldermanic investigating committee, and freely disclosed the operations of the Ring, in the hope of thereby securing his release. This was denied to him and he finally refused to give any further testimony unless he were first released. He died in prison on April 12, 1878.

## THE CHICAGO ANARCHISTS (1886)

Labor troubles which had been in a state of active fomentation in the spring of 1886 reached a tragic culmination in Chicago on the evening of May 4, when a dynamite bomb was thrown into a squadron of police which had been sent to disperse a meeting of workmen at the Haymarket on Randolph Street. At the same instant some of the crowd opened fire on the police with revolvers. As a result of the explosion and firing, seven policemen were killed and sixty were wounded.

Among those arrested within a few days after the crime were nine men who were known to be actively identified with an anarchistic organization which had arranged the meeting. They were August Spies, editor of the German anarchist organ, "Arbeiter Zeitung;" Albert R. Parsons, an ex-Confederate soldier from Alabama and editor of the anarchist periodical, "Alarm;" Adolph Fischer, a compositor on Spies's paper; Louis Lingg, a German carpenter who had arrived in America less than a year before; Samuel Fielden, an Englishman who was the organization's most forcible spokesman; Michael Schwab, also employed in an editorial capacity on the "Arbeiter Zeitung;" Oscar W. Neebe, a yeast tradesman of Ger-

man descent and a disciple of Parsons and Spies; Rudolph Schnaubelt, the man who threw the fatal bomb. Schnaubelt, through some stupid blunder of the police, was released and promptly fled from the city. The other eight were indicted and placed on trial for murder.

The evidence against Spies showed that he was the one that lit the fuse of the bomb just before it was thrown. Other incriminating evidence included extracts from inflammatory speeches and editorials in his newspaper, directly inciting to riot and bloodshed. It was shown that he had been present during a factory riot on May 3, in which the police had interfered, resulting in the death of several persons. A few hours later he had printed and distributed a circular with the headline "Revenge," in which the workingmen were called upon to avenge the murder of the strikers who had fallen in the riot. From one of his speeches he was quoted as saying: "Don't let us forget the most forcible argument of all—the gun and dynamite."

Schwab, Parsons, Engel and Fielden were similarly shown to have been active in the dissemination of anarchistic principles by their public utterances and newspaper articles. Schwab had said, in a speech made about a week before the Haymarket outrage: "For every workman who has died through the pistol of a deputy sheriff let ten of these executioners fall. Arm yourselves!"

Engel was quoted from a speech made in February, 1886, as follows: "I advise everybody to save up three or four dollars to buy revolvers to shoot every policeman down. I want every workman to join and then advise everybody you know. Those who could not buy revolvers should buy dynamite; it is very cheap and easily handled."

Fielden had said, in January, 1886: "It is quite true that we have lots of explosives and dynamite in our possession and we will not hesitate to use it when the proper time comes. We care nothing either for the military or police, for these are in the pay of the capitalists." It was also proved that Fielden, who was haranguing the crowd when the police arrived, had drawn his revolver and fired at the police immediately after the explosion of the bomb.

Parsons was one of the most rabid of the anarchists in his public attacks on government. In a speech made in February, 1885, he said: "We need no President, no Congressmen, no police, no militia and no judges; they are all leeches sucking the blood of the poor who have to support them by their labor. I say to you, rise one and all and let us exterminate them all. Woe to the police or the militia whom they send against us." In another speech made a few months later he expressed himself as follows: "The only way to convince these capitalists and robbers is to use the gun and dynamite. If we would achieve our libera-

tion from economic bondage and acquire our natural right to life and liberty every man must lay by a part of his wages, buy a Colt's navy revolver and a Winchester rifle and learn how to make and use dynamite. Then raise the flag of rebellion and strike down to the earth every tyrant that lives upon this globe."

To connect Fischer with the bombing, it was shown that he was near the scene when the bomb was thrown, and when he was arrested the next day a loaded 44-calibre revolver was found on his person. One witness testified that Fischer had given him a gaspipe bomb with instructions for its use in case of an attack by the police.

It was further established by the testimony of other anarchists who had turned State's evidence that all of the defendants were members of the anarchist society known as the International Workingmen's Association, and that the "Arbeiter Zeitung" was used as the medium for the conveyance of secret messages in code to the members. On May 4 the word "Ruhe" had appeared in the "Zeitung," which meant that members of the organization were to provide themselves with dynamite bombs and repair that evening to the various police stations. Upon the report of any collision with the police, the conspirators were to hurl their bombs into the station houses and shoot down any of the force who attempted to escape.

Lingg was the man who made the bombs, and it was shown that on the evening of May 4 he had carried a satchel full of them to a saloon for distribution among the anarchists who called for them there. Materials and equipment for the manufacture of bombs were found in his room, and fragments of the exploded missile showed it to have been one of the kind which Lingg produced.

The evidence against Neebe was rather meager. He was a stockholder in the "Arbeiter Zeitung" and actively interested in its management. He had presided at meetings where resistance to the police by force of arms and dynamite was advocated. On May 3 he had been seen to distribute some of the "Revenge" circulars printed by Spies.

Nothing of much advantage to the prisoners was brought out by the few witnesses who were placed on the stand for the defence. Spies, Parsons, Fielden and Schwab made statements on their own behalf to the jury, the burden of which was generally to rebut the evidence of a conspiracy leading up to the bombing and specifically to show that they individually had no hand in it. Fielden admitted that he had addressed the meeting, but denied that he had fired a shot or that he even had a revolver.

The trial lasted two months, from June 19 to August 19, when the jury received its instructions. The next day the jury returned a verdict of guilty as to all defendants and fixed the penalty at death for all but

Neebe, whose punishment was assessed at fifteen years' imprisonment. Motions for a new trial and in arrest of judgment were heard on October 1 and overruled by the court on October 7. When called upon to say why sentence should not be pronounced against them, all of the defendants denied their guilt. Neebe said he was sorry that he had not been sentenced to hang with the others, rather than linger in prison. Parsons made a two-hour speech in his own vindication and in defence of anarchy.

The death penalty for the seven was first set for December 3, but a stay was obtained on appeal to the Supreme Court of Illinois, which affirmed the conviction on September 14, 1887. Further appeal was then taken to the United States Supreme Court, where it was argued by John Randolph Tucker of Virginia, Roger A. Pryor of New York and Benjamin F. Butler of Massachusetts. This tribunal likewise affirmed the conviction on November 2. A petition was then filed with Governor Oglesby for a commutation of the death sentences to life imprisonment, which was granted as to Schwab and Fielden. On November 10 Lingg committed suicide in his cell by means of a bomb which he exploded while holding it between his teeth. Spies, Engel, Fischer and Parsons were hanged on November 11. Neebe, Schwab and Fielden served seven years in prison and were then pardoned by Governor John P. Altgeld.



FLORENCE MAYBRICK

(1889)

James Maybrick, a Liverpool cotton broker whose business had taken him to America where he lived for several years, married an American girl, Florence E. Chandler, in the year 1881. They subsequently took up their residence in Liverpool, where Maybrick died on May 11, 1889, under circumstances which brought Mrs. Maybrick under strong suspicion of having caused his death.

About two months before Maybrick died, Mrs. Maybrick had been detected in a liaison with a man named Robert Brierly, with whom she had spent two nights in a London hotel. On March 29, 1889, the Maybricks and Brierly met at a racetrack, and something which occurred at this meeting precipitated a violent quarrel between the Maybricks upon their return home. Although there was talk of a separation, a reconciliation was effected on the following day through the intervention of a mutual friend.

On April 27 Maybrick was taken ill with some disorder of the stomach. He consulted his physician, who prescribed for him, and a few days later he was able to return to his office. On May 1 and 2 he ate a lunch at the office which had been made up for him at

home by Mrs. Maybrick. On May 3 he became violently ill again and took to his bed. Alice Yapp, the nurse who attended him in this illness, happened to find in Mrs. Maybrick's room some poison fly paper which was known to contain arsenic, soaking in a basin of water. On May 8 she imparted this discovery to a Mrs. Briggs, a friend of Mr. Maybrick's, who was staying at the house. Mrs. Briggs at once wired to the sick man's brother, Michael Maybrick, in London, as follows: "Come at once; strange things going on here." That same evening Mrs. Maybrick gave Mrs. Yapp a letter to mail, addressed to Brierly. Instead of mailing it, the nurse opened the letter and after reading it turned it over to Maybrick's brother upon his arrival from London. In this letter Mrs. Maybrick had written: "Since my return I have been nursing Maybrick night and day. *He is sick unto death*, and it is only a question now of how long his strength will hold out."

The next day Maybrick's brother observed Mrs. Maybrick in the act of pouring some of the patient's medicine from one bottle to another. When he remonstrated with her for tampering with the medicine she explained that she was only pouring it from a smaller bottle into a larger one so that it could be shaken better. Mrs. Gore, a special nurse engaged by Maybrick's brother, arrived that day, and she reported another incident which served to strengthen

the chain of suspicious circumstances which were accumulating against Mrs. Maybrick. While Mrs. Gore was at the patient's bedside Mrs. Maybrick entered the room, picked up a bottle of meat juice which Maybrick was taking and carried it into an adjoining room. A few minutes later she returned with the bottle and placed it back where it belonged. The nurse took the bottle of meat juice and turned it over to Michael Maybrick, who sent it to a chemist for analysis. The result of the analysis was made known the following day, and showed a half grain of arsenic in the liquid. This was on May 10, and the next day Maybrick died.

On May 13 a post-mortem examination was held by three physicians, who found that death had been due to gastro-enteritis, or inflammation of the stomach and bowels, set up by some irritant poison. Mrs. Maybrick was arrested the next day on suspicion of murder. On May 30 Maybrick's body was exhumed for the purpose of an autopsy, which disclosed one-tenth of a grain of arsenic in various organs. On June 5 the coroner's jury rendered its verdict that death had been caused by poisoning wilfully administered by Florence Maybrick. She was indicted for murder on July 26 and on July 31 her trial was begun.

Michael Maybrick testified to the events which had taken place following his arrival at his brother's home, especially the incident of the medicine bottles. The

doctors who had attended Maybrick testified that his symptoms indicated arsenic poisoning. Mrs. Gore related the incident of the meat juice, and the report of its chemical analysis was introduced in evidence. Other chemists testified that they had sold fly paper containing arsenic to Mrs. Maybrick, who had told them that the flies were troublesome at the house. Mrs. Yapp told of the soaking of the fly paper, and said that the household had not been troubled with flies. Mrs. Maybrick's letter to Brierly, which Mrs. Yapp had opened, was introduced in evidence. The head waiter of Flatner's Hotel, in London, testified that Brierly and Mrs. Maybrick had been registered there as husband and wife for two nights.

The defence introduced three witnesses who knew Maybrick intimately and who testified that he had been in the habit of taking arsenic as a drug. A chemist named Heaton testified that he had sold arsenic to Maybrick regularly and that to his knowledge Maybrick had been taking it in steadily increasing doses. Several physicians who qualified as expert witnesses testified that other causes of gastroenteritis, such as tainted food, produced symptoms which frequently were mistaken for arsenic poisoning. The testimony of other chemists was introduced to show that arsenic was used as an ingredient in cosmetics and that it was reputed to be good for the complexion.

At the close of the defence Mrs. Maybrick received permission to make a statement, without going on the stand as a witness. To overcome the fly paper evidence she said that she had been using a face wash of arsenic, tincture of benzoin, elderflower water and other ingredients after a formula obtained from an American chemist. Shortly before Maybrick became sick she had lost the prescription. She had an eruption on her face which she wished to cure before April 30, when she expected to attend a ball. While she was in Germany she had learned to make a face wash from fly paper soaked in water in solution with other ingredients. The meat juice incident she explained by saying that at Maybrick's urgent request she had put into the bottle a small quantity of powder which at Maybrick's direction she had found in his vest pocket, but that she did not know what it was.

The reception of evidence consumed the first five days of the trial. The sixth and seventh days were occupied in the summing up and the charge to the jury by Mr. Justice Stephens. It is reported that this judge was beginning to show symptoms at this time of an unbalanced or at least an impaired mentality, so that he has sometimes been characterized, in this connection, as "the mad judge." This statement is borne out somewhat by a careful reading of his charge to the jury. At the outset the tone of his remarks is tem-

perate and judicial, but toward the close of his charge it becomes so pointedly hostile that it reads more like the summing up of a prosecutor than an unbiased review of the evidence.

The jury returned a verdict of guilty in thirty-five minutes, and the prisoner was sentenced to death. Public sentiment was considerably aroused over the verdict and sentence, and immediate steps were taken by Mrs. Maybrick's friends and by her mother, Baroness de Roques, to procure a commutation of the sentence to life imprisonment. Their efforts were successful, and on August 22 the sentence was commuted by Her Majesty's Home Secretary to life imprisonment on the ground that the evidence did not wholly exclude a reasonable doubt whether Maybrick's death was in fact caused by the administration of arsenic.

After Mrs. Maybrick had been in prison for three years an official petition for her release, signed by Levi P. Morton, vice president of the United States, members of the cabinet, Cardinal Gibbons and other high officials, was presented to the British government. James G. Blaine, Secretary of State, also wrote a personal letter to Robert Lincoln, American minister to the Court of St. James, urging him to see what could be done to procure her release. She was finally released on January 25, 1904, after having served nearly fifteen years in prison.

ROLAND B. MOLINEUX  
(1899-1902)

Roland B. Molineux was the son of General Edward Leslie Molineux, a prominent citizen of Brooklyn and veteran of the Civil War. The younger Molineux had distinguished himself in amateur athletics and for a number of years had been a member of the Knickerbocker Athletic Club. In December, 1897, he resigned from this organization on account of strained relations between himself and Harry S. Cornish, athletic director of the Club. Molineux had preferred charges against Cornish to the board of governors and demanded that he be discharged. When this demand was refused, Molineux sent in his resignation.

A year later, on the day before Christmas, 1898, Cornish received in the mail, addressed to him at the club house, a cardboard box wrapped in manila paper, which was found to contain a silver toothpick holder and a small bottle which, from its label and contents, appeared to be a sealed bottle of bromo-seltzer. Cornish, according to his account of the incident, concluded that some friend had sent him this gift as a sort of practical joke, and he preserved the wrapper with the thought that he might eventually identify the sender by means of his handwriting, as there was

no card enclosed. A few days later he took the bottle to the home of Mrs. Katherine Adams where he boarded and placed it on the dresser in his room. The next morning, December 28, Mrs. Rodgers, daughter of Mrs. Adams, knocked at the door of his room and asked him for the bromo-seltzer for her mother, who had a sick headache. He opened the bottle for her and poured out a dose according to the directions, which Mrs. Adams then swallowed with a glass of water. She remarked that it had a bitter taste and a minute or two afterwards she was seized with a violent spell of vomiting and then fell to the floor in a dead faint. A doctor was summoned, but while he was still working over her Mrs. Adams died without having recovered consciousness. The bottle was subsequently found to contain cyanide of mercury, a deadly poison which is very rapid in its action on the system.

While the police were working on the case the New York "World" came out with an article in which it was pointed out that only six weeks before, H. C. Barnet, another member of the Knickerbocker Athletic Club, had come to his death in a similar manner, namely, from a dose of the same poison which had been sent to him by mail with a spurious label indicating that it was a medicine. It was the theory of this newspaper that Barnet's death was the work of a



degenerate, and that it was the same person who had caused the death of Mrs. Adams while planning the death of Cornish. It was hinted that this unknown person was a man well-known in club circles.

It is not very clear from the record just how suspicion first came to be directed to Molineux, but some of the metropolitan newspapers openly named him as the suspect before he was taken into custody. He was arrested on February 27, 1899 and indicted by the grand jury of New York County on March 1 for the murder of Mrs. Adams. On motion of Bartow S. Weeks, counsel for Molineux, the indictment was quashed on April 12, on the ground that it had been found on improper evidence. The case was then re-submitted to the grand jury, which on May 9 refused to return an indictment. The prisoner was discharged, but about a month later he was rearrested and on July 20 he was indicted for the second time on the charge of murder.

Molineux's trial began on November 14, 1899, before Recorder Goff in the Court of General Sessions. The prosecution was conducted by District Attorney Asa Bird Gardiner and his first assistant James W. Osborne. George Gordon Battle was associated with Bartow S. Weeks for the defence. The selection of the jury occupied a period of fifteen days, in the

course of which over five hundred talesmen were examined.

The case for the prosecution rested almost entirely on the handwriting which appeared on the wrapper of the poison package and which was compared with other standards admitted to be in the handwriting of the defendant. A sensational feature of this line of proof was the introduction of evidence showing that in May, 1898, some one giving the name of H. C. Barnet had hired a private letter box from N. A. Hackmann of 257 West 42d Street, and that this person had written to various patent medicine firms for treatment or nostrums advertised as remedies for sexual debility. Similarly, on December 21, 1898, a man had hired a private letter box from Joseph Koch, of 1620 Broadway, in the name of H. Cornish. This person had likewise written to chemical companies for various drugs. It was the theory of the prosecution that the defendant was the man who had hired both of these letter boxes and also addressed the poison package to Cornish. The original letters received by the drug concerns in question were introduced in evidence and compared with request specimens of the defendant's handwriting. Some facsimiles of these exhibits are reproduced in the book "The Molineux Case" published in 1929 by Alfred A. Knopf.

Apart from the similarity in handwriting, Heckmann on the stand positively identified Molineux as the man who had called on him to inquire about renting a letter box a few days before it was rented to the man giving the name of Cornish. He also asserted that Cornish, who was pointed out to him in court, was not the man who had rented the box. Heckmann was equally positive in his identification of the defendant as the man who had rented a letter box from him under the name of H. C. Barnet. Additional support for the prosecution's theory was the proof that in June, 1898, Molineux had written to the Burns Remedy Company for an advertised medicine, using a distinctive stationery of robin-egg blue with three interlaced silver crescents as a crest, and that some of this same stationery had been used by the pseudo-Cornish in writing to the chemical concerns. Mary Melando, Molineux's housekeeper, testified that she had seen some of this same stationery in Molineux's dresser drawer.

There was an attempt to identify the defendant as the purchaser of the silver bottle holder, which was traced to a jewelry store in Newark, but this proof was far from convincing. The girl who had sold the bottle gave a general description of the man, which in some respects corresponded with the description of the defendant, but she was unable to identify him as the per-

son. She admitted on the stand that she had been introduced to Molineux shortly after his arrest and had then stated that she had never met him before.

The prosecution closed its case on February 5, 1900, and the next day Mr. Weeks announced that the defence would offer no testimony, confident in the belief that the prosecution had failed to establish its case. The jury received its instructions on Saturday, the 10th, and after about eight hours' deliberation brought in a verdict of guilty. On February 16th the prisoner was sentenced to death during the week of March 26th.

Molineux was taken to Sing Sing and his attorneys made immediate preparations for an appeal. John G. Milburn of Buffalo was retained to argue the case on appeal for the defendant, while the State engaged the services of ex-Governor David B. Hill. On October 15, 1901, the Court of Appeals reversed the conviction and ordered a new trial, chiefly on the ground that the trial court had erred in the reception of evidence tending to connect the defendant with the death of Barnet.

A year later, on October 13, 1902, Molineux was placed on trial again, this time before Justice John S. Lambert, in the Criminal Branch of the Supreme Court. Ex-Governor Frank S. Black and his partner, William M. K. Olcott, represented Molineux in

this trial, while the prosecution was handled by the new district attorney, William Travers Jerome. This time all evidence relating to Barnet's death was ruled out. Molineux took the stand in his own behalf, and made sweeping denials of nearly everything charged by the prosecution, including all connection with the rented letter boxes. He also established an alibi through a Columbia University professor who testified that Molineux was visiting him at Columbia about the time when the package, according to the prosecution's case, was mailed. Another person, Anna C. Stephenson, had witnessed the mailing of the package by a man who had jostled her on the sidewalk just before dropping the package in the mail box, so that she was able to read the name and address on it. Molineux was not the man. When the case finally went to the jury on November 11, 1902, it took them only twenty-five minutes to return a verdict of not guilty.

Not many years later Molineux was committed to the Kings Park State Hospital for the Insane, where he died on November 2, 1917.

ALBERT T. PATRICK

(1902-1906)

On Sunday evening, September 23, 1900, William M. Rice, a millionaire recluse 84 years old, died in his apartment at No. 500 Madison Avenue, New York City. The causes of death were stated in the attending physician's certificate as old age, weak heart, diarrhoea and mental worry. The body was embalmed about two hours after death. Two days later the funeral was halted by the coroner and the body sent to the morgue for an autopsy. This action was taken at the request of friends of the deceased, who suspected foul play in connection with his death. The coroner's physician who performed the autopsy found a general congestion of both lungs, the cause of which was undetermined at the time. The body was then cremated.

On October 4, Albert T. Patrick, a lawyer who had represented some Texas interests in litigation involving the property of Rice's widow in that state, was arrested together with Charles F. Jones, who had been employed as Rice's valet and secretary, on the charge of forgery in connection with a check for \$25,000 which Patrick had tried to cash after Rice's death. They were held in \$10,000 bail while the police pur-

sued their investigation of Rice's death. Jones made a detailed confession in which he stated that at the instigation of Patrick he had murdered Rice by the administration of chloroform.

In February, 1901, Patrick procured the necessary bail for his release in connection with the forgery charge, but immediately after leaving his cell he was arrested on the charge of murder and held without bail. Jones turned state's evidence and was granted immunity. Patrick entered a plea of not guilty.

The trial of Patrick began on January 20, 1902, before Recorder Goff in the Court of General Sessions. The only direct evidence against him was the testimony of his self-confessed accomplice, Jones, and for corroboration of Jones' story the prosecution introduced documentary and parol evidence to show that Patrick, although he had never met Rice personally, had conspired with Jones to acquire the bulk of Rice's fortune by means of a forged will and forged assignments of his property.

According to Jones' confession, he had first met the defendant in November, 1899, when Patrick had called to see Rice on some pretext of business with him. Rice did not see him then, and refused to see him on subsequent visits to the apartment, which soon became of weekly occurrence. Patrick told Jones that he could earn a great deal more money than he was get-

ting if he would go into a business deal with him. He induced Jones to write letters to him, purporting to be from Rice, to make it appear that Rice was entrusting important and confidential business negotiations to him. Jones also furnished Patrick with standards of Rice's signature to assist him in forging Rice's name to these letters. At Patrick's request Jones turned over to him Rice's will, executed some time in 1896, in which the William M. Rice Institute, an educational establishment in Texas was named as residuary legatee. Patrick then drew up a new will in which more generous provision was made for relatives and friends of Rice than under the genuine will, but in which Patrick, instead of the Rice Institute, was named as the residuary legatee. Among the spurious letters which Jones thus furnished to Patrick was one dated August 3, 1900, in which Rice instructed Patrick, in case of his death, to have his body cremated and not permit it to be embalmed.

It was shown by the prosecution that in the summer of 1900, at Patrick's suggestion, Jones had introduced Patrick's physician, Dr. Curry, to Rice, and it was Dr. Curry who had attended the deceased in his last illness. On Saturday, the day before his death, a draft for \$25,000 was brought to Rice's apartment for collection, and Jones put off its presentment to his master on the ground of his illness. He mentioned



the fact to Patrick that day, and told him also that Rice's Texan counsel, Captain Baker, was expected to arrive in New York in a day or two. They met again the following evening, when Patrick told Jones that Baker's arrival would "break up everything", and persuaded Jones to administer the chloroform to Rice that same evening. The following morning Jones, acting upon Patrick's instructions, wrote out four checks to Patrick's order, aggregating \$250,000, to which Patrick then forged Rice's name. It was the presentation of one of these checks which led to Patrick's arrest.

The physicians who were present at the autopsy on September 25 testified that the organs of the body, except the lungs, were in normal condition except as affected by the embalming fluid. The congested condition of the lungs, they said, was not caused by the embalming process, but must have been produced by the inhalation of some gaseous irritant. Other medical experts in the use of chloroform testified that its administration to Rice as described by Jones in his testimony would result in death.

The lawyers for the defence attacked the prosecution's case at its most vulnerable point, which was the lack of corroboration in the most important details of Jones' confession. They argued that even if the forgeries and other facts connected with Patrick's al-

leged designs on Rice's fortune were established there was still lacking any trustworthy confirmation of Jones' statements that he had killed Rice by the administration of chloroform at the instigation of the defendant. To discredit Jones' story they showed that he had first given three different versions accounting for Rice's death, all of which he had recanted before his final confession. It was brought out that no one, not even Dr. Curry, the undertaker or the embalmer, who had been in the room within a few hours after Rice's death, had detected any odor of chloroform. Jones had testified that he had deposited the sponge and towel saturated with chloroform in the cold kitchen range, and that when Dr. Curry came he touched a match to them and they "flashed up." The defence proved that such a thing was scientifically impossible. They also showed, assuming that Jones had administered the chloroform as described, that Rice might already have been dead from natural causes at the time. In support of this theory they brought out the fact that Jones had first left him sleeping on the bed while he went out to a restaurant; that when he returned forty minutes later Rice was lying in the same position as before. Jones believed he was alive, but he could not swear that he was. He saturated a sponge with two ounces of chloroform, put it in a cone made out of a towel, which he placed over Rice's mouth and

nose and then left the room. When he came back thirty minutes later the cone was still in the same position. A hypothetical question offered by the defence, whether such a thing could be accomplished with a living person without waking him, was excluded by the court.

The jury was apparently convinced by Jones' testimony and the collateral evidence, and brought in a verdict of guilty on March 26, 1902. On April 7 Patrick was sentenced to die in the chair during the week of May 5. His execution was stayed by notice of appeal. The Court of Appeals on June 9, 1905, affirmed the judgment of conviction and Patrick was resentenced to die in the week of August 7. Only two weeks before the day of execution a stay was granted on a motion for reargument of the appeal on the ground of newly discovered evidence. On November 28 the motion was denied and Patrick was resentenced to die in the week of January 22, 1906.

The case was finally carried to the United States Supreme Court on a writ of error, which was denied. In the meantime Patrick's friends had petitioned Governor Higgins for a pardon, and on December 20, 1906, the Governor commuted the death sentence to life imprisonment, chiefly on the ground that three of the seven judges of the Court of Appeals had dissented from the decision of affirmance. When Pat-

rick received the news of the Governor's action he announced that he would refuse to accept it, but continue his fight for freedom.

For six years longer Patrick remained in Sing Sing prison, while his lawyer, W. M. Olcott, and his friends renewed their efforts to obtain his release. In the year 1910 the Medico-Legal Society of New York took an active interest in the case and joined in the appeal to Lieut.-Governor Horace White, who was then filling the unexpired term of Governor Hughes, for Patrick's release. They published a brochure embodying the results of their researches on the relative effects of chloroform and embalming fluid on the lungs. The conclusion which they had reached was that the congested condition of the lungs in the body of Rice was due to the action of the embalming fluid and not to the effects of chloroform, as stated on the trial by the state's medical witnesses.

On November 27, 1912, Patrick was granted a full pardon and released from prison by order of Governor John A. Dix.

HARRY K. THAW

(1907-1908)

One cannot read the record of the Thaw case without getting the impression that there was a great waste of effort and of the people's money in attempting to secure the conviction of a man who, because of his mental condition, should never have been placed on trial at all.

The crime for which Harry K. Thaw was tried was the murder of Stanford White, one of the foremost architects of his time. Thaw was the pampered son of William Thaw, Pittsburg millionaire and railroad magnate. He had married Evelyn Nesbit, a New York chorus girl and artist's model, a few years before. She had been seduced by Stanford White in her early teens, according to her account, and it was the knowledge of this fact, imparted to Thaw by his wife before he married her, which rankled in his brain and led to the killing.

On the night of June 25, 1906, Stanford White was seated alone at a table, witnessing the performance of a new play, "Mam'zelle Champagne" on the stage of the Madison Square Roof Garden in New York. Thaw was there also, with his wife and two friends. Thaw's party started to leave before the perform-

ance was over. On the way down the aisle Thaw stopped opposite White's table, drew a revolver and shot White three times. White was instantly killed by the first shot. Thaw made no attempt to escape, and after a preliminary examination in the Jefferson Market Police Court the next morning he was committed to the Tombs prison without bail to await his trial.

Thaw's mother, who was on her way to Europe at the time of the shooting, turned back immediately to give her moral and financial support to her son in his ordeal. His wife, too, expressed her determination to stick to him no matter what might happen. Judge William M. K. Olcott, of the law firm Black, Olcott, Gruber & Bonyng was at first retained to conduct the defence. Olcott's plan of defence was to show that Thaw had been insane for a long time before the killing of White. When Thaw learned of this he seems to have reached the conclusion that his own lawyers were in a conspiracy to railroad him to an insane asylum. He brought his mother around to the same view, with the result that Judge Olcott was dismissed and the defence turned over to the firm of Hartridge & Peabody. John B. Gleason, a friend of Thaw's, acted as his personal counsel, and Delphin M. Delmas, a skilful and eloquent trial lawyer of California, was brought on for a fee of \$50,000 to conduct the trial.

The first trial of Thaw was principally a battle of wits and exchange of repartee between Delmas and the fiery prosecutor of New York County, William Travers Jerome. The trial began on January 23, 1907, before Justice Fitzgerald in the Criminal Branch of the Supreme Court. The selection of the jury consumed eight days, during which 336 talesmen were examined. The prosecution opened its case on February 4, with a brief address by assistant district attorney Garvan. The crime was established by the testimony of eye witnesses and medical evidence, and within two hours the prosecution had completed the presentation of its case.

John B. Gleason delivered the opening speech for the defence, in which he offered to prove that the defendant was temporarily insane when he shot Stanford White. He first placed on the stand a number of medical witnesses who were acquainted with Thaw, and who testified, either from their personal observation of him or in response to hypothetical questions, that he was insane or irrational when the crime was committed. Some of these witnesses fared rather badly on cross-examination by Jerome, and at the close of the first day's session Delmas demanded that he be placed in entire charge of the case, or he would withdraw from it. Delmas had his way, and the next day he assumed full control of the defence.

The crowning sensation of the trial was the story of Evelyn Thaw, who was asked by Delmas to repeat to the court what she had confessed to Harry Thaw about her relations with White. It was a long recital of absorbing human interest. She described how she had met White at one of the parties which he frequently gave in his luxuriantly furnished studio in West 24th Street, when she was only sixteen years old. After that he often called at her mother's home and displayed a kind and fatherly interest in her welfare. He persuaded her mother to visit some friends in Pittsburg, and promised to take good care of Evelyn in her absence. One evening while her mother was away White asked Evelyn to attend a little dinner party in his studio, with a few other friends. She accepted his invitation, but the other friends failed to show up, so she had dinner alone with White. After dinner was over White showed her over his place, which consisted of three floors. He took her upstairs to the top floor, where they walked through some curtains into a little bedroom. On a table beside the bed there was a small bottle of champagne and one glass. Mr. White poured out a glass and told her to drink it. She drank some of it, remarked that it had a bitter taste, and after a minute or two something began pounding in her ear and then the whole room seemed to go round and everything got black. When she



awoke she was lying in a room with mirrors all over the walls and ceiling. She screamed, and Mr. White came into the room and tried to quiet her. He went down on his knees and kissed the hem of her dress. The next day he called at her home and made her swear that she would not tell her mother. He said that all women did this sort of thing, but the wise ones were not found out.

Delmas then asked her to describe the effect of this narrative on Mr. Thaw. She replied that he would get up and walk up and down the room for a minute, bite his nails and say, "Oh, God! Oh, God!" and then start sobbing. They sat up all night talking about it. Two months later he told her that she was not to be blamed for it, and that he was going to marry her in spite of everything. After they were married he was constantly referring to her affair with White. He would even waken her in the middle of the night to question her about it, or she would be awakened by his sobbing over it.

The defence then introduced a number of letters which had been written by Thaw to Evelyn and other friends, tending to show how her disclosures were preying on his mind for a long time afterwards. It was also shown that Evelyn had been induced by White to visit a notorious shyster lawyer, Abe Hummel, who had inveigled her into signing an affidavit

in which Thaw was accused of immoral practices; that this fact had come to Thaw's knowledge and aggravated the frenzied state of his mind. Ten eminent alienists, whose fees, it was said, amounted to \$10,000 a day, were on hand to testify that Thaw was temporarily insane when he committed the crime. The two principal experts were Dr. Charles G. Wagner, Superintendent of the State Hospital at Binghamton, N. Y., and Dr. Britton D. Evans, Superintendent of the State Hospital in Morris Plains, N. J. It took Delmas sixteen minutes to read one of the hypothetical questions which he put to Dr. Wagner.

The testimony of the alienists was followed by the cross-examination of Evelyn Thaw, which had been deferred at the request of Jerome. She frequently broke down in the course of Jerome's gruelling inquisition, which continued for several days. After this was over, the prosecution introduced a number of witnesses in rebuttal, including an expert chemist who testified that there was no known drug with a bitter taste that could be put into a glass of champagne and produce effects such as Evelyn Thaw had described.

Then came the most dramatic feature of the trial. The District Attorney, after all his efforts to discredit the witnesses who had testified to the prisoner's insanity, suddenly declared to the court that Thaw was a madman, and so utterly insane that he could not

even discuss his defence intelligently with his counsel. He introduced six distinguished alienists to show that Thaw was insane and that he had been so for a number of years. The upshot of it was that the court appointed a commission to examine into the mental condition of the prisoner. The examination was made privately, and on April 4 the Commission pronounced the prisoner sane.

The trial was resumed on April 8, when Delmas began his final speech to the jury, which he concluded the following day. The main point of Delmas' plea to the jury was that Thaw had committed the crime under the influence of a temporary aberration to which he applied the term "dementia Americana" and defined as "that species of insanity which makes a man believe that the honor of his wife is sacred." On April 10 Jerome summed up for the State, and late that afternoon the case went to the jury. After deliberating for forty-seven hours they reported a disagreement, seven voting for a verdict of guilty of murder in the first degree, and five for acquittal on the ground of insanity.

Thaw's second trial opened on January 6, 1908, in the same court, before Justice Victor J. Dowling. Jerome was again the prosecutor, while the defence was conducted this time by Martin W. Littleton. The defence in this trial adopted the plan first suggested

by Judge Olcott, and showed that there was a history of insanity in Thaw's family, and that Thaw had inherited the taint. At the close of the case the jury returned a verdict of not guilty on the ground of the defendant's insanity at the time of the commission of the act.

Thaw was radiant at hearing the verdict, but his elation was short-lived, for instead of discharging the prisoner the court directed that he be sent to the Matteawan State Hospital for the criminal insane.

After numerous unsuccessful attempts to effect his release by habeas corpus proceedings, Thaw finally escaped from Matteawan through collusion with his keeper on August 17, 1913. He made his way to Canada, but was shortly afterwards deported to the United States. From the State of New Hampshire he was removed by extradition proceedings to New York. Here proceedings were renewed in the Supreme Court to determine the question of his sanity. The final hearing was had before Justice Peter A. Hendrick in April, 1915, when he was found sane and discharged from custody.

DR. HAWLEY H. CRIPPEN

(1910)

Dr. Hawley H. Crippen's conviction of murder in the first degree rested entirely on circumstantial evidence; but the evidence was of such a convincing nature that very few persons would hesitate to accept it as proof of his guilt.

Dr. Crippen was an American physician who had married a New York girl of foreign extraction who was known as Cora Turner, although her true name was Kunigunde Mackamotzki. In 1900 they moved to London, where Crippen became manager of Munyon's patent medicine concern. Mrs. Crippen at one time had ambitions for an operatic career, and while living in the United States she had taken a course in voice training. Her talents, however, proved unequal to her aspirations in this direction. After her arrival in London she made several attempts to go on the music hall stage, but without success.

During the first years of their married life Dr. Crippen and his wife, from all accounts, were happy together. He encouraged her in her futile endeavors for a professional career and spent considerable money in decking her out with jewelry and fine gowns for this purpose. About the year 1905 a rift developed in

their relations. Mrs. Crippen became friendly with an American music hall performer named Bruce Miller. Quarrels became of frequent occurrence between the doctor and his wife, who had a fiery temper and a shrewish tongue. A strong attachment, in the meantime, had sprung up between Dr. Crippen and Miss Ethel Le Neve, who was employed as bookkeeper at Munyon's. This double triangular situation continued without eventful occurrence until early in the year 1910.

Mrs. Crippen was last seen alive on the night of January 31, 1910, when some friends, Mr. and Mrs. Martinetti, were dining with the Crippens at their house. About a week later Crippen visited Martinetti's flat and told them that Mrs. Crippen had been called out to California on important legal matters. On March 24 he sent a telegram to Martinetti announcing Mrs. Crippen's sudden death in California, and two days later he published her obituary notice. Ethel Le Neve had gone to live at Crippen's house about two weeks before.

Mrs. Crippen's friends were slow in voicing their suspicions, but finally on June 30 a Mr. Nash called at Scotland Yard to request a police investigation of her disappearance. Chief Inspector Walter Dew took charge of the case and on July 8 he called on Dr. Crippen, saying that he was not satisfied with the reports

of his wife's death and asking him whether he cared to offer any further explanation. Crippen promptly admitted that the story of his wife's death was a fabrication. He said that she had left him on February 1 and that so far as he knew, she was still alive. His excuse for giving out that she was dead was his desire to cover up her absence without any scandal. He signed a detailed statement at the request of Inspector Dew, who seemed to be satisfied that Crippen was telling the truth. He accompanied the Inspector in a thorough search of his house, and together they drew up a form of advertisement to be inserted in the newspapers, offering a reward for information as to the whereabouts of Mrs. Crippen.

Crippen up to this point had maintained a composure in keeping with his assertions of innocence, and had he held his ground the investigation would in all probability have been dropped. But apparently the strain was too much for his nerves, for the very next day after Inspector Dew's visit he fled from London to Antwerp, taking Ethel Le Neve with him. On July 11, when Inspector Dew wished to question Crippen further, he was unable to find him or to learn what had become of him. The search at Crippen's house was renewed, and on July 13 the police unearthed beneath the floor of the coal cellar some human remains—headless, limbless, boneless and otherwise so

completely mutilated that even the sex of the victim could not be accurately determined. With the remains were found some feminine undergarments, a hair curler with a tuft of hair and some pieces of a man's pajama suit.

A warrant for the arrest of Crippen and Miss Le Neve was issued on July 16 and police circulars bearing the pictures and a description of the fugitives were broadcast. On July 22 a wireless message was received in London from Captain Kendall of the S. S. "Montrose" en route from Antwerp to Quebec, advising that two of his passengers, booked as John Robinson and son, answered the description of the fugitives. Inspector Dew immediately set sail from Liverpool and when the "Montrose" reached Father Point near Quebec on July 31 he went on board and arrested Crippen and Miss Le Neve, who was disguised as a boy.

The prisoners were taken back to London and both were indicted for the murder of Mrs. Crippen. Pleas of not guilty were entered on behalf of both. Crippen was placed on trial first, in the Central Criminal Court, Old Bailey, beginning October 18. The task confronting the prosecution was to prove first, that the remains found under Crippen's coal cellar were those of Mrs. Crippen, and second, that Crippen had caused her death. For the identification of the re-



mains they put in evidence the hair curler with the tuft of hair. It was shown that the color of this hair had originally been dark brown, but that it had been bleached to a lighter color, which answered the description of Mrs. Crippen's hair. The under garments were produced and shown to be of the kind which Mrs. Crippen generally wore. A piece of skin, seven by six inches, was identified by a surgical witness as coming from the lower portion of the abdomen. It bore a scar about four inches in length. Mrs. Crippen's sister testified that her sister had a scar of that description over her stomach.

To connect Crippen directly with the murder it was shown that the piece of pajama jacket found with the remains matched an odd pajama trousers found in Crippen's bedroom. Medical witnesses testified that an examination of the viscera revealed the presence of a powerful drug, hyoscin hydrobromide, in quantities considerably greater than the dose for any recognized medical purpose. It was proved that Crippen had ordered from a London firm of chemists five grains of hyoscin which had been delivered to him on January 19, and that he had made false statements at the time as to the purpose for which the poison was intended.

Dr. Crippen took the stand in his own defence and related in greater detail the story which he had first

told Inspector Dew regarding the strained relations with his wife, culminating in a quarrel on the night of January 31 when she made her last determined threat to leave him, which she carried into execution the following day. He explained that the hyoscin which he had purchased was all used by him in Munyon's business and for his private patients in nervous cases and also for spasmodic coughs and asthma. He offered no explanation as to the piece of pajama garment until pressed to do so on cross examination, and his statements then were rather confused and unconvincing.

Medical witnesses introduced by the defence endeavored to show that it was scientifically impossible to distinguish between the vegetable alkaloid which witnesses for the crown had identified as hyoscin and a similar animal alkaloid produced by the natural processes of putrefaction. Surgical experts testified that the piece of skin introduced by the prosecution could not be positively identified as coming from the region of the abdomen; and that the mark described as a scar was not a scar at all, but a natural abrasion of the skin. They brought out also that it was impossible to determine, from human remains in an advanced stage of putrefaction, even approximately when death had occurred. This point was stressed by counsel for the defence, who asserted in his address to the

jury, that the prosecution could not succeed unless they could prove that the remains in evidence had been deposited some time subsequent to January 31, which they could not possibly do.

On October 21 the case went to the jury, which inside of half an hour returned a verdict of guilty. Sentence of death was pronounced the same day. Crippen's lawyer took an appeal, which was heard and dismissed on November 5; and on November 23 the prisoner was hanged.

Ethel Le Neve was placed on trial for complicity in the murder on October 25 and acquitted.

CHARLES BECKER  
(1912-1915)

The New York "World" on July 14, 1912, published an affidavit made by Herman Rosenthal, proprietor of a gambling establishment on West 45th Street, New York City, in which Rosenthal swore that Charles Becker, a lieutenant of the New York police, who had raided his place a short time before, had a financial interest in his gambling house. According to Rosenthal's account, Becker had staged the raid purely for effect and to satisfy the demands of the Police Commissioner. After the raid, however, a uniformed policeman was stationed in Rosenthal's house, and some of Rosenthal's associates were arrested and indicted as common gamblers. This led to a rupture between Becker and Rosenthal and prompted the latter's disclosures to the "World." Rosenthal had also made an appointment to call on District Attorney Charles S. Whitman on July 16 for the purpose of making a complete statement of his relations with Becker.

A few minutes before two o'clock on the morning of July 16, Rosenthal was shot to death as he walked out of the Hotel Metropole on West 43d Street. Immediately after the shooting a number of men were

seen to pile into a gray touring car which sped swiftly eastward toward Sixth Avenue. Three police officers on duty nearby commandeered a taxi and started in pursuit, but the gray car was soon out of sight and they were unable to overtake it. A bystander in front of the Elks Club had noticed the license number of the car, which he furnished to the police. This resulted in the arrest of William Shapiro, driver of the car. Acting on information obtained from Shapiro, the police arrested a number of men conspicuously identified with Rosenthal's underworld, including Jacob Rosenzweig, better known as Jack Rose, Bridgie Webber, Harry Vallon and Sam Schepps.

Under a promise of immunity obtained from the District Attorney with the sanction of the court, Rose, Webber and Vallon confessed to a plot, of which Charles Becker was accused as the instigator, to kill Rosenthal so as to prevent any further disclosures of the alliance between the gamblers and the police. On the testimony of these men before the Grand Jury Becker was indicted on July 29 for the murder of Rosenthal and arrested before midnight on the same day.

The four gunmen who had been hired by the trio of gamblers to do the shooting were Frank Cirofici, alias "Dago Frank;" Jacob Seidenshner, alias "Whitey Lewis;" Louis Rosenberg, alias "Lefty Louie;"

and Harry Horowitz, alias "Gyp the Blood." All four were captured before the end of the summer and held on the charge of murder.

Becker, who was the first of the defendants to be placed on trial, was arraigned for pleading on September 3 before Judge Goff, sitting as a special trial judge in the Criminal Branch of the Supreme Court. A plea of not guilty was entered, and a stay was granted until October 3. The selection of the jury began on October 7 and was completed on October 10, when District Attorney Whitman, conducting the prosecution in person, outlined to the jury the case for the people.

The principal witnesses against Becker were Rose, Webber and Vallon. They repeated in substance on the witness stand the story which they had previously related to the District Attorney and the Grand Jury. According to their account, the plot to kill Rosenthal was formed at a conference held one night in a vacant lot in Harlem, at which Becker and the three gamblers were present. None of the witnesses was able to state definitely where or on what night this conference took place, but the time was vaguely fixed as one night in the month of June.

As the three gamblers were all self-confessed accomplices of the defendant, it was necessary for the prosecution, in order to obtain a conviction, to intro-

duce evidence to corroborate the testimony of these witnesses and directly tending to connect the defendant with the crime. There were only three witnesses of any importance who supplied the necessary corroboration. One of these was Sam Schepps, also a gambler, who was employed as a go-between and who testified that he had carried messages between Jack Rose and Becker, and that he had stood by at the Harlem conference, but without hearing what passed between the conspirators. Another witness was Jacob Luban, a convict who was brought over from a New Jersey prison to testify. Luban claimed to have been an eyewitness of the murder, standing just inside the entrance of the Metropole when Rosenthal was shot. He identified three of the gunmen and the driver of the murder car. He also testified to a conversation which he had overheard between Becker and Jack Rose a few weeks before the shooting, when Becker had said to Rose, "If that —— Rosenthal isn't croaked I'll croak him myself." Hallen, a degenerate lawyer and convict, who was also taken from prison to appear as a witness, testified to a conversation which he had overheard between Becker and a stranger in the Tombs prison. Becker had said to the stranger: "After this sensation is over the public will give me a pension for killing that damn crook Rosenthal."

John F. McIntyre, who conducted the defence, was most effective in his cross-examination of the people's witnesses. He also introduced direct testimony to discredit the accounts given by Becker's accusers. He introduced the agreement granting immunity, as well as the confession of Jack Rose, and pointed out material discrepancies between his confession and his subsequent testimony on the stand. He summed up the case for the defendant on October 23, emphasizing in his address to the jury the disreputable character of the defendant's accusers. The next day Judge Goff delivered his charge to the jury, which began its deliberations at four o'clock and returned a verdict of guilty at midnight. Mrs. Becker, who was in court to hear the verdict, fainted and was carried from the court room.

On October 30 Becker was sentenced to die during the week of December 9, 1912. His attorneys promptly served notice of appeal and moved for a new trial on the ground that the conviction was contrary to law and against the weight of evidence. The motion was denied, but the execution of sentence was stayed pending the decision on appeal, which was rendered on February 24, 1914. The Court of Appeals reversed the conviction and granted a new trial on the ground of material errors committed by the trial court in the



admission and exclusion of evidence and also for the judge's unfair and arbitrary conduct of the trial.

Becker's second trial began May 5 before Judge Samuel Seabury. The defence was conducted by Hon. W. Bourke Cockran. District Attorney Whitman, who was again in charge of the prosecution, introduced two new witnesses to corroborate the testimony of the gamblers. One of them was a newspaper reporter named Plitt who told of a conversation he had with Becker the day before the murder. Becker had asked him to get a certain affidavit from Dora Gilbert, divorced wife of Rosenthal, which Becker wished to use against the latter. He told Plitt to keep account of his movements that night, to be prepared with an alibi and to keep away from Times Square. When Plitt asked him if anything was coming off, Becker told him he would learn more the next day and would then understand. The other witness was a colored man named James Marshall who fixed the time and place of the Harlem conference as the night of June 27, at the corner of 124th Street and Seventh Avenue. He was in that vicinity as Becker's "stool pigeon" in connection with a raid on a gambling place that night on 124th Street between Seventh and Eighth Avenues.

On May 22, 1914, the case went to the jury, which again found Becker guilty of murder. An appeal was

taken on the same grounds as before, but this time the Court of Appeals, finding that the trial had been fairly conducted and the evidence sufficient to sustain the verdict, affirmed the conviction on May 25, 1915. The case was finally taken up to the United States Supreme Court on a writ of error, on the contention that the immunity agreement between the District Attorney and the three principal witnesses was unconstitutional. This proceeding was dismissed by Justice Charles E. Hughes of the U. S. Supreme Court. After further futile efforts to obtain a new trial, Becker as a last resort addressed a personal plea for executive clemency to his former prosecutor, who was now Governor of New York. The Governor refused to entertain it, however, and Becker was executed according to the sentence on July 30, 1915.

MENDEL BEILIS

(1913)

The persecution of Mendel Beilis in Russia was in some respects similar to the Dreyfus affair in France. A murder had been committed, and instead of an orderly and impartial investigation of the facts there was an outbreak of anti-Semitic prejudice, which was further inflamed by childish stories of "ritual murder."

Mendel Beilis was the superintendent of a brick factory in Kiev. He was a quiet man of industrious habits, with a wife and five children. Although he was the only Jew in a community of some ten thousand people he lived at peace with his neighbors and co-workers.

On March 20, 1911, the body of Andriusha Yustchinsky, a thirteen-year-old boy, was found in a cave on the outskirts of Kiev. He had disappeared from home eight days before. He had been stabbed through the heart, but his body bore the marks of numerous other stab wounds, thirty-seven in all, of which thirteen were found in the neck alone. A preliminary investigation by the police resulted in the arrest of Vera Tchebiriak, a woman who was known

to consort with thieves, Madam Yustchinsky, the murdered boy's mother and three men who were suspected of complicity with the Tchebiriak woman in the murder. The theory at first entertained by the police was that the boy had been killed at the instigation of his mother for the sake of obtaining a substantial sum of money which at his death would revert to her.

There was at that time a powerful organization of anti-Semitic groups in Russia known as the Double-Headed Eagle. At the time of the slain boy's burial handbills were circulated by this organization charging the Jews with the murder of Yustchinsky "for the Jewish Passover," and calling upon Christians to exterminate them. They also protested against the arrest of the Tchebiriak woman and her associates, and in response to their demands the boy's body was subsequently disinterred for a more thorough examination of his wounds. The services of Professor Sikorsky, a prominent phychiatrist but a notorious Jew baiter, were retained in this connection. He made the positive assertion that the murder had been committed for ritual purposes, as "could be seen" from the thirteen wounds in the neck.

At dawn on July 22 Beilis was roused from his sleep by a squad of gendarmes who arrested him without explanation and conveyed him to prison. The same day Vera Tchebiriak and her alleged accomplic-

es were released from custody. Beilis was questioned repeatedly by secret service agents and the district attorney about his religious beliefs and practices and urged to tell the truth about his part in the murder of Yustchinsky.

In the first indictment of Beilis, returned in January, 1912, there was no mention of ritual murder, but he was charged with participation or complicity in the murder of Yustchinsky. By this time his case had attracted world-wide attention, and leaders of his race in Russia and elsewhere raised a substantial fund for his defence. Some of the ablest lawyers in Russia were retained to defend him. The trial was delayed for over two years, while Beilis was held prisoner. The conduct of the case for the prosecution seems to have been subject to the highest official influences, but they were not in complete accord as to the course of action to be pursued. One faction, dominated by the Double-Headed Eagle, clamored for a revision of the indictment so as to include the ritual murder charge. The more conservative element, on the other hand, were for having the indictment quashed because there was insufficient evidence to sustain it. The radicals carried their point, and in the summer of 1913 the indictment was amended so as to accuse Beilis directly of murdering Yustchinsky for religious purposes.

The trial began on September 25, 1913. Beilis was conveyed from his cell to the court room, a distance of two miles, in a coach with an escort of cossacks. The court room was thronged with spectators, newspaper correspondents, lawyers, witnesses and Cossacks, while thousands who were unable to gain admission waited outside. The first day was consumed in the preliminary proceedings, including the administration of oaths, in accordance with the Russian practice, to all of the witnesses, of which there were 35 for the prosecution and 135 for the defence.

The burden of proof in Russia being upon the defendant to establish his innocence, the defence opened its proof the next day with testimony to rebut the statements made to the prosecutor by Schakhovsky, lamplighter at the factory. Schakhovsky had testified that on Saturday morning, March 12, the day of Yustchinsky's disappearance, he had seen Beilis standing in his house with two rabbis at prayer. After the prayers were over he had seen Beilis chase and catch the Yustchinsky boy, who was playing in the yard, and carry him off to the kiln where the bricks were baked. He had also stated that there was no one else at the factory at the time. A number of factory workers took the stand for the defence to refute this last statement. A ten-year-old boy testified that he often played at the factory, but that he had never been

chased by Beilis, as they had a porter at the factory to do that. He said also that he had never seen Yustchinsky at the factory, but that Vera Tchebiriak had told him to be sure and testify at the trial that he and Yustchinsky had played there together.

Vera Tchebiriak had testified that she and her children had gone to Beilis's house on March 12 to buy some milk and that she had seen the Yustchinsky boy there. This was refuted by a neighbor of Beilis named Vissimirsky, who testified that at the time Beilis had no cow and therefore no milk to sell. He also related a conversation which he had with another neighbor who had since gone to America and who before leaving Kiev had confided to Vissimirsky her reason for doing so. She told him that while on a visit to Tchebiriak's house one night about the time of Yustchinsky's disappearance she had seen a dead child lying in the bath tub. The next day Madam Tchebiriak warned her to leave the country and gave her the necessary funds to do so. This story was borne out by the testimony of a young girl who spent one night in Tchebiriak's house and who also saw the child's body there. A woman who kept a dramshop under the rooms occupied by the Tchebiriaks said that she had heard the screams of a child and the sound of something heavy being dragged across the floor above on the night of March 12.

The lawyers for the prosecution had rather unfortunate experiences with some of their witnesses. A monk who was expected to establish the Jewish practice of murdering Christian children admitted in response to the judge's question that he had never seen any such thing done, but that he had just heard of it. Schakhovsky the lamplighter, who was to be the mainstay of the prosecution, repudiated his previous testimony completely, explaining that he had been drunk at the time, and also that he had a grudge against Beilis, who once threatened to have him arrested for stealing wood from the factory.

One day the court went in a body to visit the factory where the murder was said to have taken place, the cave where the body was found, and the homes of Beilis and Vera Tchebiriak. Finally the court heard the expert testimony of the scientists and theologians on the subject of the alleged practice of ritual murder among the Jews. Here again the lawyers for Beilis scored heavily, for the testimony of their experts overwhelmingly refuted the feeble declarations of the prosecution's witnesses on the question at issue.

The trial lasted thirty-four days, and on October 28, 1913, the jury heard the judge's charge, which was rather biased against the prisoner. They were for the most part ignorant muzhiks, to whom some of the expert testimony offered must have sounded



strange and confusing. However, they seem to have been an honest and levelheaded lot, for after very short deliberation they returned a verdict of not guilty.

The judge advised Beilis to go back to prison that night, for fear of mob violence. At first Beilis accepted his suggestion and drove back to prison in the custody of the chief of police. Upon his arrival there, however, he changed his mind and decided to go home. There was no hostile demonstration, but for some time afterwards his home was visited by many well-wishers who came to congratulate him upon his acquittal.

LEO M. FRANK  
(1913)

Shortly after noon on Saturday, April 26, 1913, Mary Phagan, a fourteen-year-old girl in the employ of the National Pencil Company in Atlanta, Ga., called at the office of the factory superintendent Leo M. Frank, to draw some wages that were due her. The factory was not in operation because it was Memorial Day in Georgia, and the only persons in the building besides Mr. Frank were two workmen and a woman on the top floor.

Precisely what happened to Mary Phagan after she left Frank's office with the money she had received, will never be known; but at three o'clock next morning her lifeless body was found in the basement of the factory by Newt Lee, the colored night watchman. Her eye was discolored from a blow, there was a gash on her head and minor bruises on her body, but death had apparently been produced by strangulation from a strong cord that was tightly bound about her throat. Physicians who examined the body said she had been dead from twelve to fifteen hours. On the floor near the body were found two rudely scrawled notes. One of them, written on brown paper, read in part as follows: "Mam that negro hire down here did this

and he push me down a hole a long tall black negro did it i right while play with me." The other one, written on a white scratch pad, bore this statement: "He said he would love me, laid down play like the night-witch did it, but that long tall black negro did boy hisself."

On April 29, Frank was arrested on suspicion and on May 24 he was indicted for the murder. He entered a plea of not guilty and his trial took place in Atlanta beginning July 28.

Newt Lee, the night watchman, testified that when he arrived at the factory on Saturday afternoon about four o'clock Frank told him to go out and have a good time, but to be back by six o'clock. When he returned shortly before six Frank was changing the slip in the time clock and seemed to be nervous. About seven o'clock Frank called him up from the house to inquire whether everything was all right at the factory, a thing which he had never done before.

The principal witness against Frank was a negro named James Conley, who had been employed at odd jobs in the factory for about two years. Conley was a shiftless and dissolute character who had served in the chain gang a number of times for various offences. Before the trial he made several formal statements disclosing his connection with the crime, every one of which was inconsistent with the others. On the

trial he testified in substance that he had arrived at the factory the same time as Frank, at 8:30 on Saturday morning, and that Frank had asked him to keep watch downstairs, as he expected some women callers. Frank had an arrangement with him that when he stamped his foot Conley was to lock the factory door to prevent any intrusion and when he whistled he was to open it. Conley saw Mary Phagan come in and he heard her footsteps as she left Frank's office. A few minutes later he heard a scream and then he dozed off. The next thing he heard was Frank stamping his foot. He then locked the door and when Frank whistled he unlocked it and went upstairs. Frank was trembling, and he told Conley that he wanted to be with the little girl, but she refused him and he struck her. She fell and hit her head against something, but he didn't know how badly she was hurt. Frank asked him to go and bring her up. Conley found her in the metal room, about two hundred feet from Frank's office, with a cloth tied about her head and neck. With Frank's assistance he removed the body to the basement and left it there. The two then returned to Frank's office, where Conley wrote, at Frank's dictation, the two notes which were found beside the body. Frank took a roll of greenbacks from his desk, gave him \$200 and told him to go and burn the body with a lot of trash in the basement.

When Conley refused to do this Frank took the money back again.

The defence introduced a large number of character witnesses for the prisoner and several factory employees whose testimony tended to discredit Conley's story about Frank's intrigues with women. Frank himself made a lengthy statement to the jury, in which he denounced Conley's story as a complete fabrication. He said that after the Phagan girl had received her wages she had left his office and that was the last he had seen of her. He gave a complete account of his movements on Saturday and showed that he was engaged in the preparation of a financial report during the greater part of the afternoon. Frank's statement is remarkable for its directness and simplicity. Following is a brief excerpt from his concluding remarks:

"Gentlemen, I know nothing whatever of the death of little Mary Phagan. I had no part in causing her death nor do I know how she came to her death after she took her money and left my office. I never even saw Conley in the factory or anywhere else on April 26, 1913. Some newspaper men have called me 'the silent man in the tower' and I kept my silence and my counsel advisedly until the proper time and place. The time is now; the place is here; and I have told you the truth, the whole truth."

Frank was ably defended by some of the leading attorneys of the Atlanta bar, but the trial was pervaded with an atmosphere of extreme hostility and prejudice against the prisoner. The state of the popular feeling against Frank, as reflected even in the attitude of the prosecutor, may justly be described as bloodthirsty, and the jury could not possibly escape its influence. The case went to the jury on August 25, and after four hours' deliberation they returned a verdict of guilty. The prisoner was sentenced to hang on October 10, but an appeal was taken and on October 31 the motion for a new trial was denied. This decision was affirmed on appeal to the Supreme Court of Georgia on February 17, 1914, with two of the justices dissenting from the court's ruling as to the admissibility of certain evidence pertaining to Frank's previous relations with women. On March 7 Frank was resentenced to die on April 17. On April 16 a stay was obtained on an extraordinary motion for a new trial, which was denied, and the case was then carried to the United States Supreme Court on a writ of error. This was decided against the prisoner on December 7, and two days later Frank was sentenced for the third time, to be hanged on January 22, 1915. Before that date the case came before the U. S. Supreme Court again on an application for a certificate of reasonable doubt, which was dismissed on April 19, 1915.

This left the prisoner without further resort in the courts, and his attorneys then applied to the Governor of Georgia for a commutation of his sentence to life imprisonment. On May 31 there was a hearing before the State Prison Commission, which submitted a divided report on June 9, two of the members being opposed to the application and one in favor of it. Governor Slaton reviewed the record very carefully, and he had the courage, on June 21, 1915, to commute the prisoner's sentence to life imprisonment.

Frank was then removed to the State prison at Milledgeville, but his stay there was destined to be very short. On July 17 he was brutally assaulted by a fellow-convict who slashed his throat with a butcher knife. Before he had fully recovered from this wound, on the night of August 16, a band of men overpowered the prison guards, broke into the prison and took Frank away. They carried him by automobile a distance of 125 miles to Marietta, where the Phagan girl was buried, and at daybreak on August 17 they hanged him to a tree.

MME. HENRIETTE CAILLAUX

(1914)

At about five o'clock on the afternoon of March 16, 1914, an attractively gowned woman stepped out of her motor car and entered the editorial offices of *Le Figaro* in the Rue Drouot in Paris. She asked to see the editor, M. Gaston Calmette. When told that he was out but expected back later she said that she would wait.

About an hour afterwards, when Calmette was in his office with his friend Paul Bourget, the novelist, the woman's card was sent in to him. It bore the name of Mme. Joseph Caillaux, wife of the French Minister of Finance, whom Calmette had repeatedly assailed in the columns of his newspaper.

"Surely you will not see her?" remarked Bourget.

"Oh, yes," replied Calmette, "she is a woman and I must receive her."

Bourget withdrew and Mme. Caillaux was ushered in. The editor asked her to be seated, but in response to his invitation the woman drew a revolver which she had concealed in her muff and discharged the contents of its six chambers into Calmette's body. He slumped to the floor mortally wounded and died two hours later.



Madame Caillaux made no attempt to escape, and when the police arrived she said simply, "There was no other way of putting a stop to it," alluding to the editor's campaign against her husband. In a statement subsequently made before the examining magistrate she declared that she had no intention of killing Calmette, but that she did intend to demand that he cease his newspaper attacks on her husband, and in case of his refusal to fire at him, but only to frighten him. When she found herself face to face with her husband's enemy she lost her head and did not think of asking him anything, but fired at him until her weapon was empty.

The trial of Madame Caillaux was front-page news for the world's newspapers even at a time when the clouds of the World War were already gathering on the horizon. It was held at the Seine Assizes in the Palace of Justice beginning July 20, 1914. Under the French trial system the defendant was the first witness. Her defence, conducted by Maitre Labori, was that her act had been without premeditation or intent to kill. She addressed the jury for nearly an hour on the first day, and in a voice shaken with sobs recounted the events which led up to the shooting. Early in the morning of March 16 she had held a conference at her house with the President of the Civil Court, M. Monier, who advised her that she could do nothing to

put a stop to the *Figaro's* campaign against her husband. Shortly after M. Monier had left some one called her on the telephone to inquire what time she and her husband expected to arrive at a dinner party to be held that evening at the Italian Embassy. She replied that they would be there at a quarter past eight o'clock. She then telephoned to her hairdresser, requesting him to call at seven o'clock to do her hair for the dinner at the Embassy. She visited her dentist at 11:30 and made an appointment to call again the following Wednesday. She then drove to the Ministry of Finance to accompany her husband home to lunch. On the way she told him of the conference with M. Monier. Her husband flew into a rage when he heard what Monier had said, and exclaimed, "Very well, then, if there's nothing to be done I'll go and smash his face!"

All that afternoon she was in great distress of mind for fear her husband would commit some act of violence against M. Calmette. She finally made up her mind that she would do something herself to bring Calmette to terms and thus avert an encounter between the two men. She visited an armourer's shop and bought a small pistol, which she loaded in the shop. She then addressed a note to her husband in which she wrote that would not let him sacrifice himself for her, because France and the Republic needed

him; that she herself would do the deed. She insisted in court, however, that in going to the *Figaro* office she had not resolved to kill Calmette, but only to frighten him. When pressed by the judge, who was all kindness and consideration toward her, to explain precisely what happened in Calmette's office, she replied: "I fired, but I did not think I had hit him. It was all so quick! I cannot tell precisely what happened."

M. Monier took the stand to testify that in her conversation with him on the morning of March 16 the defendant had not given him the slightest inkling of an intention to kill Calmette. The prisoner's husband, Joseph Caillaux, was placed on the stand to testify in his wife's defence. He told the court, in a dramatic recital, that he was to blame for his wife's act because, absorbed as he was by public affairs, he had failed to realize the ravages made upon his wife's mind by the *Figaro's* calumnies. He told the jury of certain intimate letters which he had written to the defendant before he had married her and while he was still wed to his first wife, from whom he later obtained a divorce. One of these letters had already been published in the *Figaro*, and Caillaux's friends had warned him of Calmette's threat to publish two others which had come into his possession. This produced such strain and anxiety in the minds of his wife and him-

self that he took the earliest opportunity to mention it to President Raymond Poincare, who had been one of the witnesses to his marriage.

The deposition of President Poincare was read to the court. He related that on the morning of March 16, after a cabinet meeting, Caillaux had requested a private audience with him. Caillaux appeared to be greatly agitated and said that he wished to consult him about a rumor that Calmette intended to publish some letters which would expose the private affairs of himself and his wife. The President replied that he considered M. Calmette an honorable gentleman and incapable of publishing letters reflecting on the character of Mme. Caillaux. He was unable, however, to reassure the Minister, who exclaimed passionately in his presence, "If Calmette publishes those letters I will kill him!"

The most dramatic incident of the trial occurred on the fourth day, when the prosecution introduced as a witness Mme. Berthe Gueydan, divorced wife of M. Caillaux. Mme. Gueydan was questioned about the two letters which Calmette had threatened to publish, and which he was supposed to have received from her. It then developed that she had brought the letters with her into court. Maitre Chenu, counsel for the *Figaro*, invited her to read them. The witness drew an en-

velope from her purse and handed it to M. Labori, saying:

"There they are. I give them to you. You may read them or not, as you please. The responsibility rests with you."

Immediately the court room resounded with cheers. The judge pounded in vain for order and finally declared a recess for half an hour. When proceedings were resumed, long and fervid speeches were made by counsel on both sides on the question of reading the letters. M. Labori had examined the letters—there were five altogether. Three of them he considered of no importance, and he had no objection to their being read, but as to the other two, he declined to assume responsibility either for their publication or suppression—it must rest with Mme. Gueydan. When the prisoner was asked to express her wishes in the matter she threw out her arms in a despairing gesture and sat down, covering her face with her hands.

The upshot of the matter was that the letters were finally read in court. As M. Labori read the closing lines of the second letter, "I give you a thousand million kisses upon every part of your adorable little body," Mme. Caillaux sank to the floor in a faint and had to be carried out of court.

Among the spectators in court, the letters seemed to create the impression that there was nothing in them

so damaging to M. Caillaux or so humiliating to his wife that the prospect of their publication should serve as a justification for murder. The preponderance of public sentiment during the trial was decidedly against the prisoner, but the impression seems to have been quite general that either an acquittal or a suspension of sentence was to be expected, owing to the position of the defendant's husband and other political influences bearing on the situation.

The trial was over on July 28, when the jury, after being out for less than an hour, returned a verdict of acquittal. The verdict aroused popular demonstrations of disapproval, and in one section of Paris a squadron of dragoons was called out to disperse the rioters. The *Figaro's* editorial comment on the outcome was bitterly frank: "It is the most enormous scandal of our epoch and covers the radical republic with mud and blood. It is an abominable parody of justice. Mme. Caillaux has torn an acquittal from a dazed jury, a terrified government and sold judges."

THE BILLINGS-MOONEY CASE  
(1916-1917)

On the afternoon of July 22, 1916, a parade was held by the citizens of San Francisco in the interest of national military preparedness. While the parade was passing the corner of Market and Steuart streets there was a terrific explosion of a bomb or infernal machine, as a result of which ten persons were killed and about fifty more were maimed or otherwise injured. The explosion made a hole in the sidewalk and in the wall of the adjacent building. On the street and sidewalk were found cartridges, bullets, cartridge shells of different caliber and pieces of iron pipe, some of which had been hurled several hundred feet.

Shortly after the explosion several persons of known anarchistic tendencies in San Francisco were arrested, and as a result of the investigation which followed, Warren K. Billings and Thomas J. Mooney were indicted on the charge of murder. It was the theory of the prosecution that the defendants had constructed an infernal machine enclosed in a suitcase and equipped with a timing device, which they had deposited on the sidewalk some time between one and two o'clock on the afternoon of July 22, and that the explosion of this machine at the time set had produced the disaster.

Separate trials for the two defendants having been granted by the court, the trial of Billings was had first, beginning on September 11, 1916. The prosecution introduced evidence showing that the defendant had been seen near a saloon at the corner of Steuart and Market streets with a suit case in his hand at about ten minutes before two o'clock on the day in question. He was joined at the door of the saloon by another man; they looked at their watches and at the clock in the nearby ferry building tower, and then Billings disappeared in the crowd. Another witness had seen the defendant a few minutes later, without a suit case, near the corner of Mission and Steuart streets, less than a block from the spot where the explosion had occurred. Numerous other witnesses testified that they had seen Billings with the suit case elsewhere in the city between one and two o'clock. An attendant in a dentist's office at No. 721 Market street had been accosted by the defendant, who asked permission to go on the roof to take some pictures, saying that he represented the San Francisco Chronicle. He looked pale and worried, and when she made a move as if to pick up his suit case he exclaimed: "My God, don't touch that!"

It was shown that when the defendant was arrested his room was searched, and there were found a can of bullets and pistol cartridges and automobile ball



bearings similar to those which had been hurled from the infernal machine. Bits of brown papier-mache from which cheap suit cases are made, together with some metal clasps and other suit case fittings, which had been found on the street after the explosion, were also introduced in evidence. It was shown also that the defendant had been previously convicted and had served a two-year prison term for carrying high explosives on a street car. Billings testified in his own defence that he had no suit case in his possession on July 22, and that he was not in the neighborhood either of No. 721 Market street or the corner of Market and Steuart streets on that day. He gave an account of his rambles about the city from about 1:15 to 3 P. M. that day, but his alibi rested wholly upon his own unsupported testimony.

On September 23 the case went to the jury, which returned a verdict of guilty and fixed the penalty at life imprisonment. An appeal was taken to the Supreme Court of California, which affirmed the conviction.

The trial of Mooney was commenced on January 3, 1917. The principal witnesses against him were John MacDonald and F. C. Oxman. MacDonald said that shortly before two o'clock he was standing near the corner of Steuart and Market streets. He saw Billings walking along Steuart street toward Market,

carrying a suit case which he placed on the sidewalk not far from the corner. Billings then walked to the corner and pushed open the door of a saloon, where he was joined by Mooney. The latter took out his watch, looked at it, put his hand to his face as if in study and then looked along side the building. He then walked away and disappeared in the crowd.

Oxman, a visiting cattle dealer, testified that as he stood at the corner of Steuart and Market streets about fifteen minutes before two o'clock he saw an automobile with a number of passengers, including Billings, Mr. and Mrs. Mooney; that Mooney was holding a suit case on the running board; that Billings jumped excitedly from the rear seat, took the suit case from Mooney and in company with another man walked along Steuart street for a short distance and then deposited the suit case on the sidewalk.

Mooney's defence was an alibi, and to establish it he introduced a number of witnesses who testified that they had seen Mooney in the Eilers Building, more than a mile away from the place where the explosion had occurred, up to some time between one and one-thirty P. M. that day. The defence also produced some photographs which showed Mrs. Mooney, the prisoner's wife, on the roof of the building at 1:58 and Mooney himself at 2:01 P. M. The time was fixed by the position of the hands of a clock which

showed in each of these pictures. To break down this alibi the prosecution showed by the testimony of investigators that it was possible to traverse the distance back and forth between the two points involved in the period between 1:30 and 1:58 and allow time for the transactions near the corner of Market and Steuart streets as described by the witnesses.

Mooney's friends had raised a large fund for his defence, and among his attorneys at the trial was W. Bourke Cockran, eminent trial lawyer of New York, who had traveled all the way across the continent for the occasion. His skill and eloquence were unavailing, however, for on February 9, 1917, the jury returned a verdict of guilty, with the penalty of death. A motion for a new trial was denied, and an appeal was taken to the Supreme Court of California, which on September 11, 1917, rendered its decision affirming the judgment of conviction. The execution of sentence was deferred from time to time through the efforts of Mooney's lawyers, and in October, 1918, the case was taken to the Supreme Court of the United States on a petition for a writ of certiorari, based on constitutional grounds. This petition was denied by the court, without opinion, on November 18, 1918. The Governor of California, however, granted a reprieve to Mooney, staying his execution to December 13.

In the meantime, even before the case had reached the U. S. Supreme Court, considerable pressure had been brought to bear not only on the Governor of California, but even on President Wilson, for Executive clemency in the form of a pardon for Mooney, or at least a commutation of his death sentence. These petitions were based largely on representations that Mooney had been convicted on perjured testimony. President Wilson, apparently, was influenced also by other considerations, for on March 27, 1918, he sent the following telegram to the Governor: "With great respect I take the liberty of saying to you that if you could see your way to commute the sentence of Mooney it would have a most heartfelt effect upon certain international affairs which his execution would greatly complicate." On June 4 he renewed his request by telegram, concluding with the following words: "I would not venture again to call your attention to the case did I not know the international significance which attaches to it."

Governor Stephens finally announced his decision on November 28, 1918, commuting Mooney's sentence to imprisonment for life.

In the minds of most unprejudiced persons there have always been grave doubts as to Mooney's guilt. The charge that he was convicted on perjured testimony resulted in the indictment of Oxman for perjury in the spring of 1917. The indictment was based on

letters which Oxman was alleged to have written to a man named Ed Rigall in Grayville, Ill., asking Rigall to come to San Francisco and testify against Mooney. Oxman was acquitted, but four years later McDonald, the other chief witness against Mooney, repudiated his testimony, saying that he had been coached for the trial by the prosecutor. Mooney then renewed his efforts to obtain a pardon, but it was refused first by Governor Richardson in 1926 and again by Governor Young in 1930. Billings in the meantime had applied to the Supreme Court of California for a recommendation to the Governor for a pardon. This application was denied on July 2, 1930, the court finding that McDonald's repudiation of his former testimony was not sufficiently convincing.

In February, 1931, Mooney again filed a petition for a pardon with Governor James Rolph. The Governor arranged for a hearing on December 1. Mayor James J. Walker of New York City, who had become deeply interested in Mooney's case, made a special trip to San Francisco to plead for Mooney at this hearing. On April 21, 1932, Governor Rolph announced his decision, denying the prisoner's application for a pardon. In his statement the Governor, concurring in the conclusion reached by his legal advisers after an exhaustive study of the record, said he was convinced that Mooney had been justly convicted.

## THE SACCO-VANZETTI CASE (1921-1927)

There has probably never been a criminal trial in this or any other country which aroused more widespread interest and protest than the trial of Nicola Sacco and Bartolomeo Vanzetti for murder in the little town of Dedham, Mass., in the summer of 1921.

The crime of which these two men were accused was committed on the afternoon of April 15, 1920. Frederick A. Parmenter, paymaster of Slater & Morrill, Inc., shoe manufacturers in South Braintree, Mass., and Alessandro Berardelli, his guard, were held up and shot to death by two robbers, who seized the payroll of \$15,776 and escaped in an automobile which drove up immediately after the shooting. As the car approached a grade crossing of the New Haven Railroad near the factory, the gate tender started to lower the gate, but raised it again and let the bandits across when they threatened him with their guns.

Two days later the car, a seven-passenger Buick, was found abandoned in the woods near West Bridgewater. The police at once connected the crime with an attempted holdup which had occurred about four months before in Bridgewater. They were looking for a man named Mike Boda, who was suspected of

participation in the Bridgewater attempt. It was learned that Boda had stored his car in a garage at West Bridgewater, and the garage owner was requested to notify the police when Boda came for his car.

On the evening of May 5, 1920, Mike Boda, accompanied by Sacco and Vanzetti and another man named Orciani, called at the garage for Boda's car. The garage owner's wife went to a neighbor's house to telephone to the police while the garage keeper engaged the four men in conversation. He advised them not to take the car out because it still bore the previous year's license plates. The men were satisfied with this explanation and left immediately. Sacco and Vanzetti were arrested a little later on a trolley car bound for Brockton. The police were unable to find Boda. Orciani was arrested the next day, but was subsequently discharged after establishing a perfect alibi.

About the time of their arrest, Sacco, who was a shoe worker, and Vanzetti, a fish peddler, were engaged in radical activities and especially the dissemination of anti-war propaganda. All such activities were then the subject of nation-wide investigation and prosecution by agents of the Department of Justice. For this reason they doubtless attributed their arrest to the fact that they were known as radicals.

They made statements to the police which were later found to be false, and because of this fact, together with their furtive manner at the time of their arrest, they were both charged with the South Braintree murders. They were indicted on September 14, 1920, and placed on trial before Judge Webster Thayer at Dedham, Mass., on May 31, 1921.

The evidence against the prisoners consisted of the testimony of eyewitnesses to the crime, the opinion of ballistic experts and the "consciousness of guilt" betrayed by the prisoners in their statements and conduct at the time of their arrest. The prosecution was unable to trace any of the funds taken in the holdup to either one of the defendants.

Three women and two men who worked in the Slater & Morrill factory identified Sacco as one of the occupants of the murder car. Mary Splaine, the principal witness, testified that when she heard the shots she ran to the window and saw an automobile crossing the tracks. The car was from sixty to eighty feet distant and traveling at the rate of fifteen to eighteen miles an hour. She was positive in her identification of Sacco at the trial, although it was brought out on cross-examination that at the preliminary hearing about three weeks after Sacco's arrest she was unable to say with certainty that he was the man. She explained this change in her testimony by saying that



"on reflection" she was now certain that he was the same man. The testimony of the other eyewitnesses was equally dubious. Louis Pelzer, a young shoe cutter, said that when he heard the shooting he pulled up his window, looked out and saw the man who shot Berardelli. He was at the window "about a minute" and he "seen everything happen about that time." A fellow-worker later discredited Pelzer's testimony, saying that instead of pulling up the window when the shooting started, Pelzer took refuge under a bench.

The identification of Vanzetti rested chiefly on the testimony of Le Vangie, the gate tender of the New Haven Railroad, who was on duty at the grade crossing. He testified that the murder car drove up to the crossing just as he was about to lower the gate, and a man inside forced him at the point of a gun to let the car through. He identified Vanzetti as the driver of the car. His testimony, however, conflicted with that of other eyewitnesses who described the driver of the car as a young, small, light-haired man, whereas Vanzetti was middle-aged, of medium height, with dark mustache and hair. It was also discredited by the testimony of a locomotive fireman who related a conversation had with Le Vangie three-quarters of an hour after the murders, in which the latter told him that he would not be able to recognize any of the men in the car if he should see them again.

The prosecution introduced evidence to show that the pistol found on Vanzetti's person when he was arrested answered the description of the weapon which Berardelli usually carried but which could not be found at the time of the murder. Two pistol experts were placed on the stand to testify that in their opinion the bullets taken from the bodies of the deceased were fired from the pistols which had been found on the prisoners. The testimony of Captain Proctor, head of the Massachusetts State police, was rather vague on this point. Questioned as to his opinion whether the bullet taken from Berardelli's body was fired from Sacco's pistol, he replied: "My opinion is that it is consistent with being fired from that pistol."

The prisoners were represented by Fred H. Moore, of Los Angeles, who was a specialist in the trial of accused radicals. He attempted to establish alibis for both men. Witnesses for Sacco testified that he was in Boston on April 15, arranging to get a passport to visit his father in Italy. His employer testified that he was not working that day. Eleven witnesses for Vanzetti swore that he was in Plymouth on the day of the holdup, and 31 witnesses said that he was not in the murder car.

The jury returned a verdict of guilty against both defendants on July 14. For the next six years repeated motions for a new trial were made and argued

and always denied, and appeal after appeal was taken, but none was successful. In the meantime another convicted murderer, Celestino F. Madeiros, made a statement in which he confessed to participation in the crime with the Joe Morelli gang, and asserted that neither Sacco nor Vanzetti was implicated in it. Another ground on which it was sought to obtain a new trial was Captain Proctor's repudiation of the generally accepted purport of his testimony on the trial. Referring to his answer to the question put by the District Attorney, Captain Proctor in an affidavit deposed as follows: "I did not intend by that answer to imply that I had found any evidence that the so-called mortal bullet had passed through this particular Colt automatic pistol, and the District Attorney well knew that I did not so intend, and framed his question accordingly." Judge Thayer, however, did not consider any of the new testimony offered of sufficient weight to warrant a new trial. Under the Massachusetts judicial system the trial court is the sole judge of the evidence. The Supreme Judicial Court on appeal found no error in Judge Thayer's rulings or conduct of the trial, and refused to interfere.

On April 9, 1927, the prisoners were sentenced by Judge Thayer to die by electrocution in the week of July 10. The attorneys for the defence then presented a petition for clemency to Governor Fuller of Mas-

sachusetts. The Governor appointed an advisory committee consisting of President Lowell of Harvard University, President Stratton of the Massachusetts Institute of Technology and Judge Robert Grant to review the case and report their conclusions. In the meantime he made an independent investigation of his own. On August 3 he announced his decision denying the plea for clemency. He found, in effect, that the defendants had received a fair trial and that no new evidence had been brought forward which should entitle them to a new trial. He had questioned Madeiros about his confession and found that he could not recall the scene or the details of the murder. His advisory committee, the Governor said, had arrived at conclusions substantially in accord with his own.

The prisoners' lives were prolonged by successive stays of execution pending further futile moves by their attorneys to obtain a new trial, a writ of habeas corpus and a writ of certiorari from the U. S. Supreme Court. On August 23 they were executed in the Charlestown prison.

THE LOEB-LEOPOLD CASE  
(1924)

A crime unparalleled in criminal annals for atrocity of design and coldbloodedness of execution was the murder of 14-year-old Robert Franks by Nathan Leopold and Richard Loeb in Chicago on the evening of May 21, 1924.

Leopold and Loeb, who were only nineteen and eighteen years of age, respectively, were the sons of wealthy parents, and they were both college graduates. They had formed a very close companionship which, although it had its intellectual side, was most remarkable for the manifestation and development of abnormal criminal tendencies which were unaccountably present in their natures. Although they had not been trained for and had not taken up any useful vocation, they were kept in ample funds by their parents, so that motives of gain as an incitement to crime were absent in their case.

On the evening of May 21, Robert Franks, who was then attending Harvard School, a private institution in Chicago, failed to return home. The police were notified, and it was learned that Robert had last been seen around five o'clock that afternoon, when he had left the school playground to go home. About 10:30

that night Mrs. Franks received a telephone call from a man giving the name of Johnson, who told her that her son had been kidnapped, but that he was all right, and that there would be further news in the morning.

The next morning a typewritten letter addressed to Mr. Franks was received by special delivery from "George Johnson." It contained a demand for \$10,000 ransom, with the assurance that the boy would be returned unharmed upon compliance with detailed instructions given in the letter for the payment of the money. Mr. Franks was to have the package of bills in readiness and await further instructions by telephone. When the telephone message came, Mr. Franks was directed to proceed with the money to a certain drug store and await a further call there, but Mr. Franks did not understand the name of the drug store.

Early that same morning, some workmen taking a short cut across the Hegewich wastes some twenty miles from the heart of Chicago, came across the nude body of a boy which had been wedged into the mouth of a culvert. Looking about for the boy's clothing they found only one golf stocking and a pair of horn-rimmed spectacles. The body was removed by the police, and that afternoon it was identified by Mr. Franks as the body of his boy.

The only clue which the police had to work on was the pair of glasses, which it was found had not been worn by the murdered boy. These glasses were traced, nine days after the murder, to the oculist who had sold them, and from his records it was learned that the purchaser was Nathan Leopold. When the glasses were shown to Leopold he said that if he were not certain that his glasses were at home he would say they were his. A detective accompanied him on a search of his home, but he failed to produce another pair. He was taken to the State's Attorney's office for further questioning. Richard Loeb, who was with Leopold when the detectives arrived, was taken along. The boys readily gave an account of their movements on the day of the murder. They had been out together all afternoon, they said, in Leopold's Willys-Knight car, studying birds in Lincoln Park, and in the evening they had picked up two strange girls and taken them for a ride. Sven Englund, the chauffeur of the Leopold family, contributed the first information which led to the collapse of the boys' alibi. The Willys-Knight car, he said, had been in the garage all day on May 21st. When confronted with this statement, Loeb broke down and made a complete confession. He told how he and Leopold had planned the crime for several months and finally carried it out purely for the thrill and excitement which

they would get out of it. The central idea was the kidnapping scheme, their object being to construct such a perfect plan of operation and to carry it out so skilfully that the money would be paid to them with little or no possibility of detection. The killing was merely incidental to the main design, but quite essential, they agreed, to its successful prosecution. The selection of the victim was left open to the chance of favorable opportunity, and Robert Franks was chosen because they happened to see him alone on the street. Loeb was acquainted with Robert, and he called him over to the car, introduced him to Leopold and said he wanted to ask him about a certain tennis racket. They drove around the corner, and immediately stunned Robert with a blow on the head with a chisel, at the same time gagging him to stifle his screams. A few more blows on the head and a cloth stuffed into his mouth silenced their victim, who died in the car within a few minutes after he had been picked up. The body was then carried out to the Hegewich marsh and hid in the culvert after removal of the clothes, which were then burned.

Leopold's confession, which was obtained at the same time, agreed with Loeb's in all substantial details, except that each one accused the other of the actual killing. The boys were promptly indicted on June 6, 1924, on the charges of murder in the first degree



and kidnapping. They were arraigned for pleading on June 11, and Clarence Darrow and Benjamin C. Bachrach, who were retained to defend them, entered a plea of not guilty. When the trial opened before Chief Justice John R. Caverly, of the Criminal Court of Cook County on July 21, Mr. Darrow announced that the defendants withdrew their pleas of not guilty and threw themselves upon the mercy of the court. Under the laws of Illinois in such cases the State must prove the crime even where the defendant pleads guilty, before sentence may be imposed. The trial was set for July 23d without a jury. The prosecution was represented by Robert E. Crowe, State's Attorney, and several of his assistants. The crime was established in every detail by some eighty witnesses, and on July 30 the State rested its case.

The only question to be determined by the court was the degree of punishment, which under the Illinois statutes was either death or imprisonment for not less than fourteen years on the murder charge, and either death or imprisonment for not less than five years on the kidnapping charge. The only evidence, therefore, which the defence could offer, was in support of its plea of mitigating circumstances, to avoid the extreme penalty. When Mr. Darrow offered to place upon the stand several distinguished alienists and psychiatrists to give expert testimony as to the mental

condition of the defendants, the State's Attorney interposed a vigorous objection on the ground that the law does not recognize such a thing as degrees of mental responsibility for crime; that a man is either insane and legally irresponsible for his acts or sane and therefore fully responsible for them. Argument on this question consumed nearly three days. Judge Caverly's ruling was that he was in duty bound to hear any evidence that the defence might offer in mitigation, and that it was not for the court to restrict in advance the nature of such evidence.

The witnesses for the defence were Doctors William A. White of Washington, D. C., William Healey of Boston, Bernard Glueck of New York and H. S. Hulbert of Chicago. All of these physicians had made an examination of the prisoners and a study of their physical and family history, and testified on the stand from the results of their examination. The substance of their combined testimony was that both defendants gave evidence of disordered minds which rendered them incapable of distinguishing between right and wrong conduct. In rebuttal the State also introduced expert witnesses who testified directly to the contrary.

Mr. Darrow in his characteristic way made a most impassioned plea for mercy on the ground of the defendants' youth and also of their abnormal mentality,

even though it did not constitute insanity as recognized by law. He laid great stress in his speech on the notoriety of the case and on the extreme prejudice in the minds of the public against the defendants because of their wealthy connections. He disclosed the fact that the attorneys for the defence had agreed to accept any fee which the Chicago Bar Association would find to be reasonable, and that the expert witnesses were to be compensated only on a per diem basis, the same as those testifying for the State.

When the State's Attorney had finished his reply to Mr. Darrow, Judge Caverly reserved decision until September 10. On that day the public was excluded from the court room, but a mob of five thousand waited outside. The sentence imposed by the court against each of the prisoners was life imprisonment on the murder charge and 99 years for the kidnapping. The Judge said that he could not find any mitigating circumstances, neither in the act itself, nor in its motives or lack of motives, or in the antecedents of the offenders, and in choosing imprisonment instead of death he was moved chiefly by consideration of the youth of the defendants.

## THE MASSIE-FORTESCUE CASE (1932)

Early in the month of April, 1932, the eyes of the civilized world were focussed on the trial of Lieutenant Thomas Massie of the United States Navy and his mother-in-law, Mrs. Granville Fortescue, together with Albert O. Jones and E. J. Lord, two enlisted men of the navy, for the murder of Joseph Kahahawai, a native Hawaiian athlete, in Honolulu on January 8, 1932.

The world-wide interest which the trial aroused was due in part to social conditions in the territory of Hawaii, and especially in Honolulu and its environs, which had been marked by the commission of numerous crimes by native Hawaiians against white women. Among the victims of such attacks was Thalia Fortescue Massie, wife of Lieut. Thomas Massie. Joseph Kahahawai had been charged with the crime, but when he was brought to trial for it, the jury disagreed and he was discharged.

About a month later, on the morning of January 8, it was reported to the Honolulu police that Kahahawai had been lured into an automobile by a fake summons and driven off. In the course of their search for the car used by the abductors, the police stopped

an automobile driven by Mrs. Fortescue, who was accompanied by Lieut. Massie and E. J. Lord. In the car they found the slain body of Kahahawai wrapped in a sheet. A search of the Fortescue home disclosed evidence of a physical struggle, and from one of the beds a sheet was missing. Jones was arrested later, on information that he had participated in Kahahawai's abduction.

Indictments for murder in the first degree against the four defendants followed, and the trial began before Judge Charles S. Davis in the Territorial Circuit Court in Honolulu on April 4, 1932. The defendants' chief counsel was Clarence Darrow, veteran criminal lawyer of Chicago, while the prosecution was conducted by John C. Kelley, assisted by Barry S. Ulrich. The selection of the jury occupied four days, and when it was finally completed, it consisted of eight whites, three Chinese and one native Hawaiian.

The prosecution opened its case with the testimony of Edward Ulii, cousin of the deceased, who was an eyewitness of his abduction. He was followed on the stand by the policeman who stopped the Fortescue car and arrested the three inmates. Detectives who had searched the Fortescue home after the arrest described what they had found there. There was a 45-calibre automatic pistol in the kitchen. A man's shirt, soaked with perspiration and with one sleeve torn,

was hanging in a closet. The window-shades were drawn and the windows closed. The bathroom and bedroom floors had been freshly mopped, but there were still bloodstains in the bedroom. A bloodstained towel was found shoved back on a closet shelf. A woman's purse, lying on a couch in the living room, was found to contain a picture of Kahahawai. In the same room a cap was found, such as the deceased had been known to wear.

Dr. Robert Faus, who had performed an autopsy on the victim, took the stand to describe the manner of his death. A bullet had passed through the lung and severed the pulmonary artery. The bullet was identified by Dr. Faus and placed in evidence. The following day the prosecutor matched this bullet with an exploded shell and a cartridge clip which had been found on the person of Jones when he was arrested. A sporting goods salesman testified that he had sold to Jones on December 17 a pistol, a holster and a box of cartridges of that calibre. The pistol found in the Fortescue kitchen was identified by the same witness as one which he had sold to Mrs. Fortescue on December 15.

The time of the shooting was fixed at about 9 A. M. on January 8 by a neighbor of Mrs. Fortescue and a guest who was visiting her, both of whom heard the sound of a shot at that time, coming from the direc-

tion of the Fortescue home. Mrs. Fortescue's Japanese maid testified that on the afternoon of January 7 Mrs. Fortescue, Lieut. Massie and two other men had entered the Fortescue home, and later in the day Mrs. Fortescue told her that she need not come to work the next day, as she would not be home. The last witness for the prosecution was the slain man's mother, who identified as her son's cap the one which had been found in Mrs. Fortescue's home.

Up to this point, ten days after the opening of the trial, no intimation had been given by any of the defendants' lawyers as to what their defense would be. On April 14 Mr. Darrow opened for the defense by calling Lieut. Massie to the stand. He asked the witness to describe what happened on the night in September when he had taken his wife to a dance at the Ala Wai Inn. Mr. Kelley objected to this line of questioning unless it were based on a plea of insanity. Mr. Darrow replied that he did expect to raise the question of sanity, at least as to the one who fired the pistol shot. Massie was then permitted to proceed with his story. Mrs. Massie, it seems, did not care much for such affairs, and would sometimes excuse herself and go home ahead of her husband. On this occasion, when Massie was ready to go home shortly before midnight, he found that his wife had already left. He called up his home and Mrs. Massie came

to the telephone. "Something horrible has happened," she said. "Please come home at once."

When Massie reached home, his wife collapsed in his arms. Her nose and mouth were bleeding, her jaw was broken, her lips were crushed and her eyes were bruised and swollen. When she was finally able to speak, she said that on her way home some men had dragged her into a car and then beaten and ravished her. The next day the police brought in four persons, including Kahahawai, who were identified by Mrs. Massie as her assailants. She singled out Kahahawai as the one who had beaten her the most. The critical condition of his wife for weeks after the assault reacted on his own mind and nerves, Massie testified, so that he was unable to dismiss it from his thoughts.

After the trial of Kahahawai, terminating in a disagreement of the jury, Massie was further disturbed by false rumors reflecting on his wife's good name in connection with the assault. He conferred with a lawyer to see what could be done to clear his wife's name, and as a result of this conference he began to lay plans for obtaining a confession from Kahahawai. It was solely for the purpose of wresting a confession from him, Massie testified, that the Hawaiian was kidnapped by a ruse and brought into the home of Mrs. Fortescue on the morning of January 8. There Massie covered him with a gun that belonged to Jones and said to him: "I've got you here to make you tell



what happened in September." At first Kahahawai persisted in his denials. Massie threatened that unless he told the truth he would bring in a gang that would beat him to ribbons. Then suddenly the captive confessed: "Yes, we done it."

"That is the last thing I remember," Massie continued. "Suddenly the picture came back to me—the assault on my wife when she prayed for mercy and he replied with a blow that broke her jaw."

"Do you know what you did?" asked Mr. Darrow.

"No," replied Massie.

"Do you know what became of you?"

"No, Mr. Darrow."

By this sagacious stroke Darrow coolly waved aside the whole elaborate structure of circumstantial evidence which had been so painstakingly built up by the prosecution. That Massie had done the killing, the defense was now prepared to concede, but the act had been committed, according to Massie's testimony, in a moment of temporary aberration. The young lieutenant's story was unshaken on cross-examination, which took up the greater part of the following day.

Two alienists for the defense testified, from their conversations with Massie and his statements on the witness stand, that he was insane when he fired the fatal shot. Dr. Thomas J. Orbison, of Los Angeles, described his condition as "delirium with ambulatory automatism," caused by the attack on his wife and

aggravated by the rumors reflecting on his wife's character, and finally by the abrupt confession of the deceased. Dr. Orbison summed up his testimony in the statement that Massie was insane for the reason that he did not know what he was doing. Another alienist, Dr. Edward Huntington Williams, characterized the defendant's mental state as "chemical or shock insanity," which was due to gland disturbances set up during a long period of tension and emotional excitement.

As their next witness the defense introduced the defendant's wife, Mrs. Thalia Massie. Under Mr. Darrow's sympathetic guidance, and in a voice frequently broken by sobs, she recounted the tragic events of that September night on which she was attacked. The most dramatic touch of the entire proceedings was contributed by Mrs. Massie when Mr. Kelley, on cross-examination, handed the witness a paper which was part of a psychiatric examination made by Dr. E. Lowell Kelly of the University of Hawaii. It contained statements concerning Mrs. Massie's feelings toward her husband before the assault. The prosecutor asked her if the answers to the questionnaire were in her handwriting. Her features were white with passion as she answered.

"Where did you get this?" she demanded. "Don't you know that this is a confidential communication between doctor and patient? I refuse to say whether

that is my handwriting or not. What right have you to bring this into court?"

She tore the document into fragments as she spoke, and tossed them to the floor. Her action evoked a burst of applause from the spectators in court, and Judge Davis angrily demanded silence under a threat to clear the room. When order had been restored and Mrs. Massie was excused from the stand, Mr. Darrow announced that the defense rested.

A recess of one day was taken to give the alienists for the prosecution an opportunity to examine Lieut. Massie and study his testimony. With the opinion of these experts the prosecution closed its case. Dr. Paul Bowers and Dr. Joseph Catton, of Los Angeles, both of them distinguished psychiatrists, and Dr. Robert Faus of Honolulu, a practitioner of long experience in mental cases, all testified that in their opinion Massie was sane when he fired the shot that killed Kahahawai.

The case went to the jury on the afternoon of April 27, after Mr. Darrow, displaying his customary eloquence and a vigor that belied his seventy-five years, had delivered a four-hour plea to the jurors. Judge Davis instructed the jury that as to Massie, they might bring in a verdict of guilty of second-degree murder, guilty of manslaughter, not guilty because of insanity, or not guilty. As to the other defendants,

Mrs. Fortescue, Lord and Jones, any one of three verdicts might be returned: guilty as charged, guilty of manslaughter, or not guilty.

After more than 48 hours' deliberation, the jury announced its verdict. All four defendants were found guilty of manslaughter, which under the laws of Hawaii is punishable by imprisonment for a term not to exceed ten years. Sentence was deferred for four days to May 4, when Judge Davis sentenced the four defendants to the maximum term of ten years at hard labor. Immediately afterwards, Governor Lawrence M. Judd of Hawaii commuted their sentences to one hour in the custody of the sheriff. It was a fitting climax to a trial that was tense and thrilling in nearly all of its developments. The Governor's action was attributed in part to pressure emanating from high government sources on the mainland, and partly also to Darrow's agreement to abandon the prosecution of the four men who had been accused with Kahahawai of the assault on Mrs. Massie.

Lieutenant Massie and his wife shortly afterwards returned to the United States, and on May 31, 1932, Governor Ruby Laffoon of Kentucky, of which state Massie was a citizen, issued an executive order restoring to him any rights of citizenship which he might have lost by reason of his conviction in Honolulu.

BRUNO RICHARD HAUPTMANN  
(1935)

On the night of March 1, 1932, the infant son of Col. and Mrs. Charles A. Lindbergh was kidnapped from his crib in the nursery of the Lindbergh home near Hopewell, New Jersey. The child's disappearance was discovered about ten o'clock that night by his nursemaid, Betty Gow, who had left him asleep in his crib about two hours earlier. The immediate clues to the crime were a crudely written ransom note found on the window sill of the nursery, demanding \$50,000 for the child's return; a chisel lying on the ground near the house and a home-made ladder built in three sections, which was found about seventy feet from the house. The middle section of the ladder was broken.

Shortly after the kidnapping, further ransom negotiations were conducted by the kidnapper through the mails, addressed to Col. Lindbergh. At the same time Dr. John F. Condon, a retired school teacher residing in New York City, had offered his services, through published announcements in a New York newspaper, as a go-between for the purpose of satisfying the ransom demands and securing the child's return. On March 12 a taxi driver named Joseph Perrone delivered to Dr. Condon a note from the kidnapper, au-

thenticated by the identical symbols used in the original ransom note, inviting him to a meeting in Woodlawn Cemetery that night. Accompanied by Al Reich, a retired pugilist, Dr. Condon went to this place, and while Reich waited in the car, the doctor met a man who spoke with a German accent, gave his name as "John," and represented himself as the agent of the kidnapers. Dr. Condon told him that Col. Lindbergh would not pay any ransom unless he first had convincing proof that he was dealing with the kidnapers. This the stranger agreed to supply. A few days later Dr. Condon received in the mail a package containing the sleeping suit which the child had worn on the night of the kidnapping.

After further negotiations through the newspapers, a meeting was arranged for the payment of the ransom at St. Raymond's Cemetery on the night of April 2. Dr. Condon and Col. Lindbergh drove there together, but Condon entered the cemetery alone and met the same person he had seen before and paid him \$50,000 in bills. The stranger gave Condon a note in which Col. Lindbergh was told that his boy would be found on "the boad Nelly" at a designated spot off the Massachusetts coast.

After a futile search for such a boat, Col. Lindbergh realized that he had been duped. He then gave to the police and to the Federal agents who were working on the case the serial numbers of the bills which

constituted the ransom payment. On May 12 the body of the missing child was found in a shallow grave in the woods about four miles from the Lindbergh home. An autopsy disclosed that the skull had been fractured in three places.

During the next two years wide publicity was given to the numbers of the ransom bills, and rewards were offered for the apprehension of the kidnapper. Some of the bills showed up from time to time, all in the metropolitan area of New York City, but they offered no tangible clue until on September 15, 1934, the attendant of a gas station on Lexington Avenue received from a customer a ten-dollar gold certificate, on which he wrote the license number of a customer's car. When the bill was subsequently deposited at a branch of the Corn Exchange Bank, the teller recognized it by number as one of the ransom bills and reported it to the police. The owner of the car was found to be Bruno Richard Hauptmann, a carpenter by trade, who lived with his wife and child at 1279 East 222 St., New York City. In the garage of his home detectives found \$14,600 of the ransom money, concealed under the floor, deposited in various receptacles or stuffed in holes which had been bored in the timbers.

Hauptmann was arrested and subsequently extradited to Flemington, county seat of Hunterdon County, New Jersey, for trial on the charge of murder. The trial, which attracted world-wide attention, began on January 2, 1935, before Justice Thomas W.

Trenchard in the Court of Oyer and Terminer in Flemington. Attorney General David T. Wilentz was in charge of the prosecution. The defendant was represented by Edward J. Reilly, celebrated criminal lawyer of New York City, assisted by three local practitioners of New Jersey.

Col. and Mrs. Lindbergh were the first witnesses for the state. They identified the ransom notes which they had received, the sleeping suit and other garments which the infant had worn on the night of the kidnapping. Col. Lindbergh testified that on the night of the ransom payment he had heard a voice calling to Dr. Condon with a German accent, "Hey, Doctor!" which he identified as the voice of the defendant. Betty Gow, the nursemaid, testified to the events in which she took part on the night of March 1. Joseph Perrone identified the defendant as the person who had paid him one dollar to deliver the first note to Dr. Condon on March 12. A resident of Hopewell, a man named Amandus Hochmuth, 87 years old, testified that he had seen the defendant driving through Hopewell in the direction of the Lindbergh estate in a dirty green automobile on March 1, and that he had a ladder in the car.

The state's star witness was Dr. Condon, who positively identified the defendant as the person whom he had met at the Woodlawn Cemetery on the night of March 12 and to whom he had paid the ransom of



\$50,000 on April 2. He was followed by Col. Henry Breckinridge, Lindbergh's personal counsel and adviser, who told the court that everything which Condon had done from the time of his contact with the kidnapper had been done upon his advice or with his approval.

The prosecution next undertook to prove by the testimony of handwriting experts that all of the ransom notes, addressed either to Col. Lindbergh or to Dr. Condon, were in the handwriting of the defendant. The first of these experts to take the stand was Albert S. Osborn, of New York, who testified to an experience of over thirty years as an expert witness on disputed handwriting in 39 states of the Union and in several foreign countries. Mr. Osborn said that he had made a careful comparison of the ransom notes with the handwriting of the defendant as shown on his automobile license application and with specimens taken by the police after his arrest. He was fully convinced, he told the jury, that the ransom notes were all written by the defendant. Following Osborn on the stand, seven additional experts testified to the same effect.

Hauptmann had told the police that the ransom money discovered in his garage had been found by him in a shoe box left with him by a friend named Isidor Fisch, who went to Germany in December, 1933, and that he did not open the box until long aft-

er Fisch's departure. To refute this testimony, the state introduced a witness, Mrs. Cecile M. Barr, cashier of Loew's Sheridan Square moving picture theatre, who identified the defendant as the man who had bought an admission ticket on November 26, 1933, and given her in payment a \$5 bill which was later found to be part of the ransom money. Walter E. Frank, an accountant of the U. S. Treasury Department, who had made an analysis of Hauptmann's banking and brokerage accounts, testified that Hauptmann's total cash and stock assets on April 2, 1932, were only \$203.90 in a savings bank and stock with a market value of about \$100. Between that date and the time of his arrest, his assets, according to Frank's testimony, had increased \$44,486, including the ransom money found at his home.

The prosecution put into evidence a board from the closet of Hauptmann's home on which was written Dr. Condon's telephone number, apparently in the defendant's handwriting. Over the violent objections of counsel for the defense, the court also admitted into evidence the extension ladder which had been found at the scene of the crime. This opened the way for some of the most striking as well as most damaging evidence introduced against the prisoner. Arthur Koehler, of Madison, Wisconsin, a government expert, of twenty-one years' experience in the identification of wood, testified that one of the uprights in the

ladder was originally part of a plank in the floor of Hauptmann's attic. Other parts of the ladder, he said, were obtained from the lumber yard where Hauptmann had been employed, as established by certain peculiarities in the dressing of the lumber, which Koehler had traced to a mill in South Carolina. He also showed that the board from Hauptmann's attic had been planed, in the construction of the ladder, with the identical plane found in Hauptmann's garage. This testimony was effectively supported by photographic enlargements showing the results of the witness' microscopic examination of the wood in question. Koehler was the last important witness for the state, which had now taken sixteen days to present its case, in the course of which 87 witnesses had testified and 247 exhibits were put into evidence.

The defense interposed by Hauptmann's counsel was a complete denial of all the charges except the possession of the ransom money. To support this denial a number of witnesses were produced to establish alibis for the defendant on the various occasions when he was connected with the crime by the testimony of the state's witnesses.

The first witness for the defense was Hauptmann himself, who gave a rather complete account of his life and then told of his association with Fisch, whom he first met in March or April, 1932. In December, 1933, at a party which Hauptmann was giving in his

home to Fisch just before the latter's departure for Germany, Fisch delivered a shoe box to him, saying that it contained papers, and requesting Hauptmann to "keep care of it and put it in a tight place." The box remained unopened, he said, until August, 1934, after Fisch's death in Germany, when he discovered that it contained money and began to spend it. He said that he had never been in Hopewell, New Jersey. He gave a fairly complete account of his movements on March 1, 1932, and said that at the time of the kidnapping he was taking coffee with his wife in a bakery-restaurant in New York where Mrs. Hauptman was employed as a waitress. On the night of April 2, when the ransom money was paid, he said he was entertaining a party of friends in his home; and he was also having a birthday party at home on the night when the \$5 ransom bill was passed at Loew's theatre.

During the severe cross-examination which followed, Hauptmann stuck consistently to the essential details of his testimony, although forced to admit that some of the statements he had made were false. He was visibly shaken when confronted with one of his notebooks in which the word "boat" had been spelled "b-o-a-d" as in the last note delivered to Condon. Although he would not admit that he had written the word he agreed that it looked like his handwriting. He explained that he might have spelled the word in

that way years before, but he spelled it correctly on the stand.

The three alibis set up by the defendant were supported on the stand by his wife. Another witness, Elvert Carlstrom, was produced who swore that he had seen Hauptmann in the restaurant with Mrs. Hauptmann between 8:30 and 8:50 on the night of March 1. Carlstrom's testimony probably carried little weight with the jury, however, because of his confused and evasive answers on cross-examination. The testimony of two other witnesses who undertook to support Hauptmann's alibis was seriously discredited when it was brought out on cross-examination that one of them had been a bootlegger, while the other had kept a speakeasy and had been known under three different names.

The defense then endeavored to connect the deceased Isidor Fisch with the kidnapping and with the receipt of the ransom money. One witness testified that he had seen Fisch and Violet Sharpe, maid in the Lindbergh household, boarding a street car with a young baby at the West 42d Street ferry in New York about midnight of March 1, the night of the kidnapping. Another witness, employed as cashier in a Brooklyn restaurant, said that on the night of the ransom payment he had seen a man resembling the pictures of Fisch leap over the wall of St. Raymond's

Cemetery. Neither of these witnesses bore up very well on cross-examination.

Dr. Erasmus M. Hudson, of New York, an amateur finger print expert, testified that he had found and developed five hundred fingerprints on the ladder which was in evidence, but that none of Hauptmann's prints were among them. Contradicting the testimony of Arthur Koehler, the Federal wood expert, a building contractor, Charles J. De Bisschop, of Waterbury, Conn., gave his opinion as a practical lumber man that the board in Hauptmann's attic was not part of the same piece of lumber as the upright in the ladder. It was clear from his testimony, though, that his conclusions were not based on such extensive and precise measurements as those which had formed the basis of Koehler's testimony.

When the defense had rested, the prosecution called a number of witnesses in rebuttal, including Miss Hannah Fisch, who had been brought over from Leipzig, Germany, to testify that her brother Isidor had only \$500 cash when he died. The case went to the jury on February 13. Justice Trenchard in his charge gave the jury, consisting of eight men and four women, the choice of three verdicts—guilty without a recommendation for mercy, guilty with a recommendation, and acquittal. The jury deliberated for eleven hours and returned a verdict of guilty without recommendation for mercy.

An appeal was taken to the Court of Errors and Appeals of New Jersey, which on October 9, 1935, affirmed the conviction by unanimous vote of the thirteen judges. The United States Supreme Court refused to review the case, and the prisoner's execution was fixed for the week of Jan. 13, 1936. The New Jersey Court of Pardons refused a plea of clemency, but on January 16 Governor Hoffman granted a reprieve for the condemned man and ordered the state police to renew their investigation of the case. A few weeks later it was announced that Paul H. Wendel, a disbarred lawyer of Trenton, had confessed to the kidnapping. He subsequently repudiated the confession and said that it had been obtained from him under duress and by torture. Governor Hoffman refused to grant a further reprieve, and the prisoner was executed on April 3, 1936.

It was estimated that the investigations leading to the arrest of Hauptmann and his subsequent trial had cost the Federal government, the state of New Jersey and New York City over \$1,200,000. The cost to New York City was about \$250,000. The bill for the trial alone amounted to more than \$130,000. Albert S. Osborn, handwriting expert, put in a bill for \$12,000. Koehler's bill of expenses reached the same figure. The fees of the court stenographers footed up to \$21,000.

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